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U.S. Citizenship
and Immigration
Services



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FEB 06 2004

FILE:  Office: MIAMI, FLORIDA Date:

IN RE: Applicant: 

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF PETITIONER:



Identifying data deleted to
prevent disclosure of information
invasion of personal privacy

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The acting district director's decision will be affirmed.

The applicant is a native and citizen of Nicaragua who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966. The CAA provides, in part:

[T]he status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, (now the Secretary of Homeland Security, (Secretary)), in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

The acting district director determined that the applicant did not qualify for adjustment of status as the spouse of a native or citizen of Cuba, pursuant to section 1 of the CAA, because he was not inspected and admitted or paroled into the United States. The acting district director, therefore, denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

The record reflects that on July 1, 2002 at Miami, Florida, the applicant married [REDACTED] a native and citizen of Cuba whose immigration status was adjusted to that of a lawful permanent resident of the United States, pursuant to section 1 of the CAA. Based on that marriage, on July 29, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

The record further reflects that in April 2000 the applicant entered the United States without inspection at or near Brownsville, Texas.

8 C.F.R. § 245.2(a)(2)(ii) provides, in part:

An application for the benefits of section 1 of the Act of November 2, 1966 is not properly filed unless the applicant was inspected and admitted or paroled into the United States subsequent to January 1, 1959. An applicant is ineligible for the benefits of the Act of November 2, 1966 unless he or she has been physically present in the United States for one year.

The applicant bears the burden of proving that he in fact presented himself for inspection as an element of establishing eligibility for adjustment of status. *Matter of Areguillin*, 17 I&N Dec. 308 (BIA 1980). The applicant has failed to meet that burden.

It is, therefore, concluded that the applicant was not inspected and admitted or paroled into the United States. There is no waiver available to an alien found statutorily ineligible for adjustment of status on the basis that he

was not inspected and admitted or paroled into the United States. Therefore, the applicant is not eligible for the benefit sought. The decision of the acting district director to deny the application will be affirmed.

This decision is without prejudice to the filing of a Relative Immigrant Visa Petition (Form I-130) by the applicant's spouse on behalf of the applicant.

ORDER: The acting district director's decision is affirmed.