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Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

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FEB 11 2004

FILE: [REDACTED] Office: MIAMI, FLORIDA Date:

IN RE: Applicant: [REDACTED]

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: SELF-REPRESENTED

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 District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The district director's decision will be withdrawn, and the matter will be remanded to him for further action.

The applicant is a native and citizen of Cuba 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 district director determined that the applicant was not eligible for adjustment of status because he was not inspected and admitted or paroled into the United States. The district director, therefore, denied the application. *See District Director's decision* dated September 29, 2003.

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

The application for adjustment of status, filed on July 10, 2001, and previous applications filed with the Service, show that the applicant entered the United States near El Paso, Texas on September 10, 1989, and that he was not inspected by an officer of the Service upon entry.

When an alien enters the United States within the limits of a city designated as a port of entry, but at a point where immigration officers are not located, the applicable charge is entry without inspection. *See Matter of O-*, 1 I&N Dec. 617 (BIA 1943); *See also Matter of Estrada-Betancourt*, 12 I&N Dec. 191 (BIA 1967); *Matter of Pierre*, 14 I&N Dec. 467 (BIA 1973).

The record reflects that on September 22, 1989 the applicant applied for asylum at the Miami, Florida district office and that on December 1, 1989 he appeared for an interview at the Miami district office regarding his asylum application.

On April 19, 1999, the Commissioner, Immigration and Naturalization Service, INS, issued a memorandum setting forth the Service's policy concerning the effect of an alien's having arrived in the United States at a place other than a designated port of entry on the alien's eligibility for adjustment of status under the Cuban Adjustment Act of 1966 (CAA), 8 U.S.C. § 1255. In her memorandum, the Commissioner states that this policy does not relieve the applicant of the obligation to meet all other eligibility requirements. In particular, CAA adjustment is available only to applicants who have been "inspected and admitted or paroled into the United States." An alien who is present without inspection, therefore, is not eligible for CAA adjustment unless the alien first surrenders himself or herself into Service custody and the Service releases the alien from custody pending a final determination of his or her admissibility.

The Commissioner concluded that if the Service releases from custody an alien who is an applicant for admission because the alien is present in the United States without having been admitted, the alien has been paroled. This

conclusion applies even if the Service officer who authorized the release thought there was a legal distinction between paroling an applicant for admission and releasing an applicant for admission under section 236. When the Service releases from custody an alien who is an applicant for admission because he or she is present without inspection, the Form I-94 should bear that standard annotation that shows that the alien has been paroled under section 212(d)(5)(A).

In a footnote, the Commissioner added that it may be the case that the Service has released an alien who is an applicant for admission because he or she is present without inspection, without providing the alien with a parole Form I-94. In this case, the Service will issue a parole Form I-94 upon the alien's asking for one, and satisfying the Service that the alien is the alien who was released.

The applicant, in this case, presented himself to the INS on December 1, 1989 for an asylum interview. By applying for asylum and presenting himself to the INS the applicant surrendered himself into Service custody. The applicant was subsequently released from Service custody pending a final determination of his admissibility. Therefore, pursuant to the Commissioner's policy, the applicant has been paroled.

On May 21, 2002 the applicant appeared for an interview for adjustment of status pursuant to section 1 of the CAA. On that date it was determined that the applicant had a criminal history and he was requested to present certified copies of his arrest reports and court dispositions of his arrests. The applicant failed to obtain all the arrest and court documents within the allotted time.

In her memorandum, the Commissioner states that this policy does not relieve the applicant of the obligation to meet all other eligibility requirements. In the instant case the applicant has been paroled but has not submitted evidence to prove that he is not inadmissible under other sections of the Immigration and Nationality Act.

Accordingly the district director's decision will be withdrawn and the record will be remanded to him in order to re-adjudicate the application for adjustment of status. The district director will enter a new decision which, if adverse to the applicant, it will be certified to the AAO for review accompanied by a properly prepared record of proceedings.

ORDER: The district director's decision is withdrawn. The matter is remanded to him for further action consisted with the foregoing discussion.