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U.S. Citizenship  
and Immigration  
Services



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FEB 12 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: 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 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 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 acting district director found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for a period of more than 180 days but less than one year. The acting district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See Acting District Director's Decision* dated September 12, 2003.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who -

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such aliens' departure or removal is inadmissible.

(v) Waiver. - The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the applicant was admitted to the United States with a nonimmigrant visa on August 30, 2000 and was authorized to stay until December 29, 2000. He remained longer than authorized and was unlawfully present in the United States from December 30, 2000, until his application for adjustment of status

was filed. A review of the documentation in the applicant's service file confirms that his I-485 Application for Adjustment of Status (I-485), was received by the Immigration and Naturalization Service (now, Citizenship and Immigration Services, "CIS") on October 1, 2001. He thus accrued unlawful presence from December 30, 2000 to October 1, 2001, a period in excess of 180 days but less than one year, making him inadmissible under section 212(a)(9)(B)(i)(I) of the Act.

The record further reflects that an I-512, Authorization for Parole of an Alien into the United States (I-512), was issued to the applicant on January 5, 2002. The record indicates that the applicant departed the United States on an unknown date after the issuance of the I-512. It was this departure that triggered his unlawful presence. Pursuant to section 212(a)(9)(B)(i)(I) he was barred from seeking admission within three years of the date of his departure. He was paroled into the United States on March 12, 2002 to continue his application for adjustment of status.

As stated above, section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, U.S. citizen or lawfully resident spouse or parent.

A review of the documentation in the record reflects that the applicant is single and both his parents are deceased. The applicant has failed to show that he has a qualified family member in order to be eligible to file for a waiver under section 212(a)(9)(B)(v) of the Act.

The applicant was offered an opportunity to submit evidence in opposition to the district director's findings. In response to the notice of certification, the applicant submitted a letter stating that he left the United States with an advance parole. The applicant argues that he never "departed" the United States because upon his return he was paroled and not admitted into the United States, and therefore never departed.

The term "depart" as used in the Act means to literally leave the United States. The terms "admitted" and "paroled" are terms defined in section 101(a)(13) of the Act and are used under specific circumstances when an individual seeks to enter the United States. Any individual who leaves the United States after a period of unlawful presence is subject to the provisions of 212(a)(9)(B) of the Act.

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. He has failed to meet that burden. The decision of the acting district director to deny the application will be affirmed.

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