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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
CIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



FILE 

Office: BLOOMINGTON, MINNESOTA

Date: **JAN 7 2004**

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 APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Bloomington, Minnesota and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application approved.

The applicant is a native of Cuba and citizen of Spain 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. This Act provides, in pertinent 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, 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 she was admitted to the United States under the Visa Waiver Pilot Program (VWPP). The district director therefore, denied the application.

On notice of certification the applicant asserts that although she was admitted under the VWPP as a visitor she is eligible for adjustment under the CAA.

The record reflects that the applicant was born in Cuba on November 8, 1966 to a Cuban mother and a Cuban father. The applicant entered the United States as a visitor on June 25, 2001 at Philadelphia, PA where she was inspected and admitted to the United States under the VWPP pursuant to section 217 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1187.

Referring to 8 C.F.R. 217, the district director determined that the applicant was not eligible for adjustment of status to permanent residence because aliens admitted to the United States under the VWPP are ineligible for adjustment of status under section 245 of the Act, 8 U.S.C. § 1255. 8 C.F.R. § 217.3(a) states in pertinent part:

An alien admitted to the United States under this part may be admitted as a visitor for pleasure for a period of not to exceed 90 days and must maintain his or her status as a visitor. An alien admitted under this part is not eligible for extension of his or her authorized period of temporary stay in the United States, is not eligible of his or her adjustment of status to that of an alien lawfully admitted for permanent residence pursuant to section 245 of the Act, other than an immediate relative as defined in section 201(b) of the Act, 8 U.S.C. § 1151 (b), and is not eligible for change of nonimmigrant status pursuant to section 248 of the Act, 8 U.S.C. § 1258.

It is clear from Service regulations and from the statute that an alien admitted to the United States under the provision of section 217 if the Act is not eligible for adjustment of status to that of a lawful permanent residence under section 245 of the Act. The applicant in this case however, is applying for adjustment of her status to permanent residence under section 1 of the CAA and not under section 245 of the Act. There is no prohibition against an alien who has been admitted to the United States under the VWPP to adjust status under section 1 of the CAA. To be eligible for adjustment of status under section 1 of the CAA, an alien must show only that she is a native or citizen of Cuba, she was inspected and admitted or paroled into the United States, she has been physically present in the United States for at least one year, and that she is admissible to the United States for permanent residence. See *Matter of Masson*, 12 I&N Dec. 699 (BIA 1968).

It is concluded that the applicant has established she has met all the requirements set forth in section 1 of the CAA of November 2, 1966 that she is eligible for adjustment of status under the CAA and warrants a favorable exercise of discretion. There are no known grounds of inadmissibility. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained and the application approved.