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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[REDACTED]

FILE [REDACTED]

Office: MIAMI, FLORIDA

Date: **JAN 20 2004**

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 APPLICANT:

[REDACTED]

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 the 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.

Robert P. Wiemann

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 Colombia 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 her spouse was not paroled or admitted into the United States as a nonimmigrant. The acting district director, therefore, denied the application. See *Acting District Director's Decision* dated March 25, 2003. On notice of certification counsel provided documentation and a brief asserting that the applicant's spouse was paroled and was eligible to receive benefits under the CAA. Based on the documentation provided, the AAO withdrew the acting district director's decision and remanded the case for appropriate action and entry of a new decision. See *AAO Decision* dated September 30, 2003. The acting district director reviewed the case and determined that the applicant's spouse had not been physically present in the United States for one year after being paroled and prior to the filing of an adjustment application under the CAA. The director, therefore, concluded that the applicant's spouse was ineligible for adjustment of status under

section 1 of the CAA of November 2, 1966 and therefore the applicant did not qualify for adjustment of status as the spouse of a native or citizen of Cuba. 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 7, 1987 the applicant's spouse [REDACTED] entered the United States without inspection. Pursuant to Commissioner Meissner's Memorandum, Mr. [REDACTED] was paroled into the United States on March 12, 2002. On May 28, 2002 his NACARA application was approved. On March 26, 2002 at Miami, Florida, the applicant married Mr. [REDACTED] a native and citizen of Cuba. Based on that marriage, on May 7, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

The statute clearly states that the provisions of section 1 of the CAA of November 2, 1966, shall be applicable to the spouse and child of any alien described in this subsection. In order for the applicant to be eligible for the benefits of section 1 of the CAA, he or she must be the spouse of a native or citizen of Cuba who has been inspected and admitted or paroled into the United States, and who has been physically present in the United States for at least one year. See *Matter of Milian*, 13 I&N Dec. 480 (Acting Reg. Comm. 1970) (applying the physical presence requirement as amended by Refugee Act of 1980, Pub. L. No. 96-212, sec. 203(i), 94 Stat. 102, 108 (1980)).

In reviewing the status of an alien applying for benefits under section 2 of the CAA of November 2, 1966, the Regional Commissioner determined that an applicant who had been admitted as an immigrant in possession of a valid immigrant visa had never "originally" arrived in the United States as a nonimmigrant or parolee subsequent to January 1, 1959. In reaching this conclusion, the Regional Commissioner stated that "[s]ection 1 obviously refers to those Cuban refugees who were inspected and admitted as nonimmigrants or paroled into the United States." *Matter of Benguria Y Rodriguez*, 12 I&N Dec. 143 (Reg. Comm. 1967), reaffirmed by *Matter of Baez Ayala*, 13 I&N Dec. 79 (Reg. Comm. 1968).

As noted, Mr. [REDACTED] was paroled into the United States on March 13, 2002, pending his asylum hearing. On May 7, 2002, less than one year after his parole, Mr. [REDACTED] filed an application for

adjustment of status under section 1 of the Cuban Adjustment Act.

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.

Mr. [REDACTED] was not physically present in the United States for one year after being paroled in order to be eligible to file an adjustment application as required. He is, therefore, ineligible for the benefit sought. Since her husband was not eligible to apply for benefits under the CAA, the benefits of section 1 of the CAA are not available to the applicant. 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.