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U.S. Citizenship
and Immigration
Services



FILE:



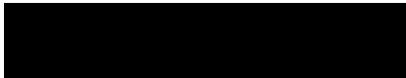
Office: TEXAS SERVICE CENTER

Date:

JUN 4 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 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 Director, Texas Service Center, who certified her decision to the Administrative Appeals Office (AAO) for review. On certification the AAO withdrew the director's decision and the application was remanded to her for further action. The director reaffirmed her original decision and certified it to the AAO for review. The director's and the AAO's previous decisions will be withdrawn and the matter will be dismissed.

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 director determined that the applicant had previously filed an Application to Register Permanent Residence or Adjust Status (Form I-485), and already been approved adjustment of status and that an Alien Registration Card (ARC) had been issued to the applicant. The director further noted that the applicant was paroled into the United States on September 27, 1999, and filed the application for adjustment of status under section 1 of the CAA on June 20, 2000. The director determined that the applicant had not been physically present in the United States for one year prior to the filing of the application. The director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. On certification the AAO found that the application for adjustment of status was erroneously approved and that the applicant had not been physically present in the United States for one year prior to the filing of the application. *See AAO decision* dated August 22, 2003.

On March 11, 2004, the director reaffirmed her original grounds of denial for the adjustment of status applicant was forwarded the record of proceeding to the AAO for review.

The record proceedings reveals that the applicant entered the United States near Sunny Isles, Florida on October 6, 1998, and that he was not inspected by an officer of the Service upon entry. The applicant was issued a Notice to Appear for a removal hearing and was transported and detained at the Krome Detention Facility. The record further reveals that the applicant was released from Service custody on October 8, 1998; see *From I-220A, Order of Release on Recognizance*.

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).

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 of the Act. When the Service releases from custody an alien who is an applicant for admission because he or she is present without inspection, the Arrival-Departure Record (Form I-94) should bear that standard annotation that shows that the alien has been paroled under section 212(d)(5)(A) of the Act.

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, was released from Service custody on October 8, 1998, and was issued a Form I-94 on September 27, 1999. Pursuant to the Commissioner's policy, the applicant was paroled on October 8, 1998, and therefore he was eligible to apply for adjustment of status to permanent residence pursuant to section 1 of the CAA of November 2, 1966, on June 20, 2000. The applicant was scheduled for a removal hearing and on August 10, 2000, an Immigration Judge granted him Lawful Permanent Resident (LPR) status.

The record further reflects that a copy of the applicant's Form I-485 was stamped approved on September 18, 2000, and Memorandum of Creation of Record of Lawful Permanent Residence (Form I-181) was generated on January 29, 2001, under number SRC-01-087-58240. The director erroneously stated in her decision that the applicant filed a Form I-485 on January 29, 2001, under number SRC-01-087-58240, and denied the original Form I-485 filed on June 20, 2000.

The AAO finds that the applicant was eligible to file for adjustment of status on June 20, 2000, since he was paroled into the United States on October 8, 1998. The AAO further finds that the subsequent denial of the Form I-485 was done in error since the applicant's status was adjusted as of August 10, 2000. Accordingly, the previous decisions of the director and the AAO will be withdrawn, and the matter will be dismissed.

ORDER: The previous decisions are withdrawn. The matter is dismissed.