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U.S. Citizenship
and Immigration
Services



FILE:



Office: MIAMI, FLORIDA

Date: MAY 03 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 District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The District Director's decision was affirmed by the AAO on January 7, 2004. The matter is now before the AAO on a motion to reopen. The motion will be dismissed and the AAO decision dated January 7, 2004, will be affirmed.

The applicant is a native and citizen of Peru 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 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, (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 district director determined that the applicant was not eligible for adjustment of status as the spouse of a native or citizen of Cuba, pursuant to section 1 of the CAA of November 2, 1966, because his spouse was not paroled or admitted into the United States a nonimmigrant. *See District Director Decision* dated October 27, 2003. The decision was affirmed by the AAO on January 7, 2004.

In the motion to reopen, the applicant states that after an interview conducted in 1997, by the Immigration and Naturalization Service (now known as Citizenship and Immigration Service (CIS)), he was informed that the application was approved and he would receive an approval notice in the mail. In addition the applicant states that when he inquired about the status of his case, seven years later he was informed that he does not qualify for benefits under section 1 of the CAA because his spouse was admitted as a refugee and was not inspected and admitted as a nonimmigrant or paroled into the United States. The applicant requests that his case be reopened since his spouse is applying for U.S. citizenship and he would like to appear for an interview once his wife becomes a U.S. citizen.

The record clearly reflects that on March 31, 1993, the applicant's spouse was admitted to the United States for permanent residence as a RE-6 (an alien who adjusted status as a refugee). Since the spouse of the applicant was admitted as a refugee under section 207(a) of the Act, and not as a parolee or nonimmigrant the benefits of section 1 of the CAA are not available to the applicant.

The regulation at 8 C.F.R. § 103.5(a) states in pertinent part:

- (a) Motions to reopen or reconsider. . .

(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence.

....

(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

The AAO finds that in the motion to reopen no new information or evidence was submitted and the applicant did not identify any legal error or misapplication of law in the previous AAO decision.

The issues in this matter were thoroughly discussed by the district director and the AAO in their prior decisions. In the motion to reopen the applicant failed to provide any new evidence or set forth any new facts to be proved. Since no new issues have been presented for consideration, the motion will be dismissed.

This decision has no effect on any other pending application, including the I-130 noted on motion.

ORDER: The motion is dismissed and the prior AAO decision is affirmed.