



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: MIAMI, FLORIDA Date:

OCT 21 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: 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

**Identifying data deleted to
prevent disclosure of warranted
invasion of personal privacy**

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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 The District Director's decision will be withdrawn, and the application will be approved.

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 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 District Director determined that the applicant was not eligible for adjustment of status because he was not inspected and admitted or paroled into the United States. The District Director, therefore, denied the application. See *District Director's Decision* dated June 16, 2001.

The applicant has provided no statement or additional evidence on notice of certification.

A review of the record reveals that on September 12, 1994, the applicant entered the United States without inspection at or near Laredo, Texas. The applicant was taken into custody and was scheduled for a deportation hearing. On October 12, 1994 the applicant was released from Service custody on his own recognizance. The record further reflects that on November 7, 1995, he filed an application for asylum.

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

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.

In the present case the applicant approached Boarder Patrol Agents and requested political asylum. The applicant was taken into custody but was subsequently released from Service custody pending a final determination of his admissibility. Therefore, pursuant to the Commissioner's policy, the applicant has been paroled.

The applicant is eligible for adjustment of status to permanent residence pursuant to section 1 of the CAA of November 2, 1966, and warrants a favorable exercise of discretion. Accordingly, the District Director's decision will be withdrawn, and the application will be approved.

ORDER: The District Director's decision is withdrawn. The application is approved.