



U.S. Citizenship
and Immigration
Services



FILE:



Office: TEXAS SERVICE CENTER

Date:

OCT 21 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 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 information deleted to
protect privacy of ungranted
immigration benefits

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DISCUSSION: The application was denied by the Director Texas Service Center, who certified her decision to the Administrative Appeals Office for review. The Director's decision will be affirmed.

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 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. See *Director's Decision* dated June 8, 2004.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the Director's findings. No additional evidence has been entered into the record.

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.

The Director states that the applicant was paroled into the United States on March 1, 2002, the date she was issued an I-94. On January 21, 2003, less than one year after being paroled into the United States, the applicant filed the application in this matter for adjustment of status under section 1 of the Cuban Adjustment Act.

A review of the record of proceedings reveals that the applicant entered the United States without inspection at or near Miami Beach, Florida on or about October 7, 2001.

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).

The record reflects that on January 28, 2002, the applicant presented himself before the Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services (USCIS)). A record of Deportable/Inadmissible Alien (Form I-213) was created and the applicant was released.

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.

The applicant in this case surrendered herself into Service custody. She was released from Service custody on January 28, 2002, and was issued a Form I-94 on March 1, 2002. Pursuant to the Commissioner's policy, the applicant was paroled into the United States on January 28, 2002.

Based on the above the AAO finds that the Director erred in finding that the applicant was paroled into the United States on March 1, 2002. This office finds the Director's error to be harmless. The applicant was paroled into the United States on January 28, 2002, and filed her application for adjustment of status on January 21, 2003. Consequently, the applicant was not physically present in the United States for one year at the time of filing the adjustment application as required. She is, therefore, ineligible for the benefit sought. The Director's decision will be affirmed.

This decision, however, is without prejudice to the filing of a new application for adjustment of status, along with supporting documentation and the appropriate fee, now that the applicant has been physically present in the United States for at least one year.

ORDER: The Director's decision is affirmed.