



U.S. Citizenship
and Immigration
Services

A2

[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date:

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 PETITIONER:

[REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application and a motion to reopen were denied by the Director, Texas Service Center who certified her decision to the Administrative Appeals Office (AAO) 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 was not eligible for adjustment of status because she failed to present documentation required by law in order to adjust her status. The Director considered the application abandoned and denied it accordingly. *See Director's Decision* dated May 12, 2003. On April 30, 2004, counsel filed a motion to reopen which the Director denied on May 12, 2004.

The record reflects that on August 27, 2002, the Director requested the applicant to submit additional medical documentation because her initial Medical Examination and Supplemental Form (Form I-693) did not report results of testing for tuberculosis or results of a chest X-ray, or the waiver of such as outlined in 42 C.F.R. § 34.3(b)(2)(i). The applicant did not submit the requested documentation nor was the notice for additional information returned to the Service as undeliverable. On May 12, 2003, the Director denied the application for adjustment of status due to abandonment pursuant to 8 C.F.R. § 103.2(b)(13). In his motion to reopen counsel did not submit documentary evidence to substantiate the claim that the required evidence was not material to the issue of eligibility, nor that the request for additional evidence was sent to an incorrect address or that the applicant informed Citizenship and Immigration Services (CIS) of a change of address, and the motion to reopen was denied accordingly.

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.

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that she is eligible for adjustment of status. She has failed to meet that burden. The decision of the Director to deny the motion to reopen will be affirmed.

This decision, however, is without prejudice to the filing of a new application for adjustment of status, along with the proper evidence and the appropriate fee.

ORDER: The Director's decision is affirmed.