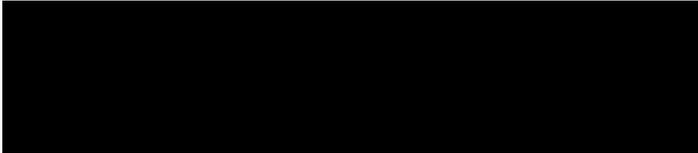


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U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date:

FEB 16 2005

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

DISCUSSION: The application was denied by the Director, Texas Service Center, who certified her decision to the Administrative Appeals Office (AAO) for review. The AAO affirmed the Director's decision. The matter is now before the AAO on a motion to reopen. The motion will be dismissed and the previous decisions of the Director and the AAO 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 found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act). The Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See Director's Decision* dated September 4, 2002. The decision was affirmed by the AAO. *See AAO's decision*, dated April 29, 2003.

The regulation at 8 C.F.R. § 103.5 states in pertinent part, that:

Reopening or reconsideration.

(a) Motions to reopen or reconsider in other than special agricultural worker and legalization cases--

(1) When filed by affected party--

(i) General. . . . Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

As note above the AAO affirmed the District Director's decision on April 29, 2003. The motion to reopen was filed on October 8, 2003, more than five months after the District Director's decision was affirmed. Counsel fails to provide any reasons as to why the motion to reopen was not filed within 30 days of the decision.

This office finds that the failure to file a motion to reopen within the allotted time was not reasonable and beyond the control of the applicant. Therefore, a favorable exercise of the Secretary's discretion is not warranted and the motion to reopen will be dismissed.

Counsel states that she attached a Notice of Entry of Appearance as Attorney or Representative (Form G-28) to the documentation submitted. The AAO notes that the record of proceedings does not contain a Form G-28 and therefore this office will not be sending a copy of the decision to counsel.

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