**U.S. Department of Homeland Security**
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**U.S. Citizenship and Immigration Services**

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FILE: Office: MIAMI, FLORIDA Date: JUL 19 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 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 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 District Director found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for a period of more than 180 days but less than one year. The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See District Director's Decision* dated September 15, 2004.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
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> > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such aliens' departure or removal is inadmissible.
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> . . . .
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> (v) Waiver. - The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that on July 28, 2001, the applicant was admitted into the United States with a K-1 visa, as a fiancé of a U.S. citizen for a period of three months, expiring on October 27, 2001. The applicant failed to marry his U.S. citizen fiancée and on August 5, 2002, he filed an Application for Adjustment of Status (Form I-485). The record further reflects that an Authorization for Parole of an Alien into the United States (Form

I-512) was issued to the applicant on September 13, 2003. The applicant departed the United States on an unknown date after the issuance of the Form I-512 and he was paroled back on November 28, 2003, to continue his application for adjustment of status. It was this departure that triggered his unlawful presence. The applicant was unlawfully present in the United States from October 28, 2001, until August 5, 2002, the date his Form I-485 was filed, a period in excess of 180 days but less than one year and is therefore inadmissible under section 212(a)(9)(B)(i)(I) of the Act.

As stated above, section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, U.S. citizen or lawfully resident spouse or parent.

A review of the documentation in the record of proceedings reflects that the applicant is single and his parents are deceased. Therefore the applicant does not have the qualifying family member required to file a waiver under section 212(a)(9)(B)(v) of the Act.

The applicant was offered an opportunity to submit evidence in opposition to the District 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 he is eligible for adjustment of status. He has failed to meet that burden. The decision of the District Director to deny the application will be affirmed.

**ORDER:** The District Director's decision is affirmed.