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

[redacted]

A2

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUN 15 2005

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: 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 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 he failed to presented documentation required by law to adjust his status and denied the application accordingly. *See Director's Decision* dated September 21, 2004.

The regulation at 8 C.F.R. § 245.2(a) states in pertinent part:

> (3) Submission of documents.-
>
> > (iv) Under the Act of November 2, 1966. An application for adjustment of status is made on Form I-485A. . . . . The application must include a clearance from the local police jurisdiction for any area in the United States when the applicant has lived for six months or more since his or her 14th birthday.

In addition the regulation at 8 C.F.R. § 245.5 states in pertinent part:

> Pursuant to section 232(b) of the Act, an applicant for adjustment of status shall be required to have a medical examination by a designated civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant, including compliance with section 212(a)(1)(A)(ii) of the Act, shall be incorporated into the record.

The record reflects that on April 27, 2004, the Director requested that the applicant submit a letter of clearance from the Tampa police department or sheriff's office and a Medical Examination and Supplemental Form (Form I-693) from a Citizenship and Immigration Services (CIS) authorized civil surgeon. The applicant was given twelve weeks to respond. The applicant failed to respond and on July 27, 2004, the Director issued a notice of intent to deny the adjustment of status application, giving the applicant an additional 30 days to submit the requested documentation. The applicant did not respond and the application for adjustment of status was denied.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the Director's findings. On October 19, 2004, the applicant submits a letter in which he states that his brother never delivered the letters addressed to him and he is willing to submit the police clearance letter and a completed Form I-693.

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 failed to meet that burden within the required time frame after a request for evidence and a notice of intent to deny were issued. The decision of the Director to deny the application will be affirmed.

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

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