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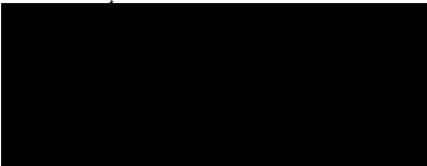


FILE: [REDACTED] Office: MIAMI, FLORIDA Date: **NOV 18 2005**

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 APPLICANT:



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 cursive script, appearing to read "Robert P. Wiemann".

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 Israel 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 provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

The District Director determined that the applicant did not qualify for adjustment of status as the spouse of a native or citizen of Cuba, pursuant to section 1 of the CAA, because her spouse was not paroled or admitted into the United States as a nonimmigrant. The District Director, therefore, denied the application. *See District Director's Decision* dated April 5, 2005.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. Counsel submits a brief in which he states that the applicant's spouse is a refugee and therefore she is eligible for the provisions of section 1 of the CAA of November 2, 1966. Counsel states that in denying the application for adjustment of status the Service is going against case law found in *Matter of Masson* 12 I&N Dec. 699 (BIA 1968), as well as the Cuban Refugee Act. Both *Matter of Masson, supra*, and the Cuban Refugee Act state that the Act grants benefits to those Cubans who had fled as refugees from the Fidel Castro Government of Cuba. Counsel states that the Service is arguing that the Cuban Refugee Act does not apply to refugees. Finally, counsel states that an individual married to a Cuban national who was admitted as a RE-6 (refugee) is eligible for adjustment of status to permanent resident under the CAA of November 2, 1966.

Counsel statements are not persuasive. The District Director does not argue nor state in his decision that the CAA of November 2, 1966, does not apply to refugees. In his decision, the District Director states that the applicant's spouse was admitted as a refugee pursuant to section 207 of the Act and therefore she was not paroled or admitted into the United States as a nonimmigrant.

The terms "refugee" and "admitted as a refugee" have two different meanings. The term "refugee" refers to an individual who has left his or her native country and is unwilling or unable to return to it because of persecution or fear of persecution. The term "admitted as a refugee" refers to an individual who was granted refugee status after he or she submitted a Registration for Classification as Refugee (Form I-590) and has been processed pursuant to section 207 of the Act.

The record reflects that on September 11, 1988, the applicant's spouse [REDACTED] was admitted to the United States for permanent residence as a RE-6 (an alien who adjusted status as a refugee). On March 18, 2004, at Miami Beach, Florida, the applicant married [REDACTED] a native and citizen of Cuba. Based on that marriage, on May 17, 2004, the applicant filed for adjustment of status under section 1 of the CAA.

The statute clearly states that the provisions of section 1 of the CAA of November 2, 1966, shall be applicable to the spouse and child of any alien described in this subsection. In order for the applicant to be eligible for the benefits of section 1 of the CAA, he or she must be the spouse of a native or citizen of Cuba who has been inspected and admitted or paroled into the United States, and who has been physically present in the United States for at least one year. *See Matter of Milian*, 13 I&N Dec. 480 (Acting Reg. Comm. 1970) (applying the physical presence requirement as amended by Refugee Act of 1980, Pub. L. No. 96-212, sec. 203(i), 94 Stat. 102, 108 (1980)).

In reviewing the status of an alien applying for benefits under section 2 of the CAA of November 2, 1966, the Regional Commissioner determined that an applicant who had been admitted as an immigrant in possession of a valid immigrant visa had never "originally" arrived in the United States as a nonimmigrant or parolee subsequent to January 1, 1959. In reaching this conclusion, the Regional Commissioner stated that "[s]ection 1 obviously refers to those Cuban refugees who were inspected and admitted as nonimmigrants or paroled into the United States." *Matter of Benguria y Rodriguez*, 12 I&N Dec. 143 (Reg. Comm. 1967), *reaffirmed by Matter of Baez Ayala*, 13 I&N Dec. 79 (Reg. Comm. 1968).

Section 101(a)(15) of the Immigration and Nationality Act (the Act), states in pertinent part: "The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens . . ." It continues to list all the nonimmigrant classifications. Refugees are not included in the list, therefore, individuals who were admitted as refugees are considered to be immigrants.

In the present case, the spouse of the applicant was admitted as a refugee under section 207(a) of the Act, and not as a parolee or nonimmigrant. Therefore, as the applicant's spouse was not inspected and admitted as a nonimmigrant or paroled into the United States, the benefits of section 1 of the CAA are not available to the applicant.

Accordingly, the applicant is ineligible for adjustment of status to permanent residence, pursuant to section 1 of the CAA of November 2, 1966. The decision of the District Director to deny the application will be affirmed.

This decision is without prejudice to the filing of a Petition for Alien Relative (Form I-130) by the applicant's spouse on behalf of the applicant.

ORDER: The District Director's decision is affirmed.