U.S. Department of Homeland Security
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Washington, DC 20529

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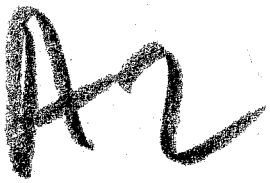
U.S. Citizenship and Immigration Services

[redacted]



FILE: [redacted] Office: MIAMI, FLORIDA Date: SEP 30 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: 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. On certification the AAO withdrew the District Director's decision and the application was remanded to him for further action. The District Director reaffirmed his original decision and certified it to the AAO for review. The District Director's decision will be withdrawn, and the application will be approved.

The applicant is a native and citizen of Colombia 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 pertinent 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 child of a native or citizen of Cuba, pursuant to section 1 of the CAA, because her stepfather, was not paroled or admitted into the United States as a nonimmigrant. The District Director, therefore, denied the application. On certification the AAO found that the record did not establish whether the applicant's stepfather had been inspected and admitted as a nonimmigrant or paroled into the United States, or whether he had been denied adjustment of status under section 1 of the CAA, and remanded the case to the District Director for a new decision. *See AAO decision* dated November 7, 2001.

On December 27, 2004, the District Director reaffirmed his original grounds of denial for her adjustment of status and certified his decision to the AAO for review.

On notice of certification, 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.

The record reflects that on July 1, 1999, an Immigration Judge approved the s application for adjustment of status as an F1-6 (unmarried son of a U.S. citizen). On January 20, 2000, at Coral Gables, Florida, the applicant's mother married a native and citizen of Cuba. Based on that marriage, on December 14, 2000, the applicant filed for adjustment of status under section 1 of the CAA.

In his original decision the District Director cited an unpublished AAO decision that indicated that per *Matter of Milian*, 13 I & N, Dec. 480 (Acting Reg. Comm. 1970) an applicant must be the spouse of an alien who has been admitted into the United States under section 1 of the Act. This is an old decision that the AAO has since withdrawn, as the interpretation of *Matter of Milian* was incorrect. The correct interpretation of *Matter of Milian* is that the spouse must meet all the requirements of section 1 of the CAA, not that he or she necessarily was admitted under the CAA.

A review of Service file (A26 697 908) reveals that he entered the United States without inspection at or near McAllen, Texas on September 30, 1984. His file reflects that on October 2, 1984, he applied for asylum at the Miami, Florida district office. On June 14, 1989, appeared for an interview at the Miami district office regarding his asylum application.

When an alien enters the United States within the limits of a city designated as a port of entry, but at a point where immigration officers are not located, the applicable charge is entry without inspection. *See Matter of O-*, 1 I&N Dec. 617 (BIA 1943); *See also Matter of Estrada-Betancourt*, 12 I&N Dec. 191 (BIA 1967); *Matter of Pierre*, 14 I&N Dec. 467 (BIA 1973).

On April 19, 1999, the Commissioner, Immigration and Naturalization Service, INS, issued a memorandum setting forth the Service's policy concerning the effect of an alien's having arrived in the United States at a place other than a designated port of entry on the alien's eligibility for adjustment of status under the Cuban Adjustment Act of 1966 (CAA), 8 U.S.C. § 1255. In her memorandum, the Commissioner states that this policy does not relieve the applicant of the obligation to meet all other eligibility requirements. In particular, CAA adjustment is available only to applicants who have been "inspected and admitted or paroled into the United States." An alien who is present without inspection, therefore, is not eligible for CAA adjustment unless the alien first surrenders himself or herself into Service custody and the Service releases the alien from custody pending a final determination of his or her admissibility.

The Commissioner concluded that if the Service releases from custody an alien who is an applicant for admission because the alien is present in the United States without having been admitted, the alien has been paroled. This conclusion applies even if the Service officer who authorized the release thought there was a legal distinction between paroling an applicant for admission and releasing an applicant for admission under section 236. When the Service releases from custody an alien who is an applicant for admission because he or she is present without inspection, the Form I-94 should bear that standard annotation that shows that the alien has been paroled under section 212(d)(5)(A).

In a footnote, the Commissioner added that it may be the case that the Service has released an alien who is an applicant for admission because he or she is present without inspection, without providing the alien with a parole Form I-94. In this case, the Service will issue a parole Form I-94 upon the alien's asking for one, and satisfying the Service that the alien is the alien who was released.

In the present case, the applicant's stepfather presented himself to the INS on June 14, 1989, for an asylum interview. By applying for asylum and presenting himself to the INS, surrendered himself into Service custody. was subsequently released from Service custody pending a final determination of his asylum application. Therefore, pursuant to the Commissioner's policy, has been paroled into the United States.

Based on the above this office finds that the applicant's stepfather is an alien described in section 1 of the CAA of November 2, 1966, and therefore the applicant is eligible for adjustment of status to permanent residence and warrants a favorable exercise of discretion. Accordingly, the District Director's decision will be withdrawn, and the application will be approved.

The AAO notes that the applicant's mother adjusted her status to that of a lawful permanent resident as a CU-7 pursuant to section 1 of the CAA of November 2, 1966.

ORDER: The District Director's decision is withdrawn. The application is approved.