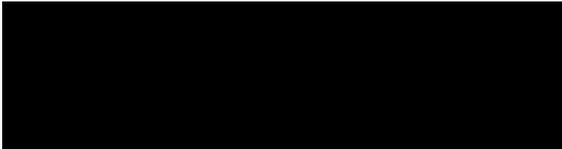


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Services

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FILE: [REDACTED] Office: MIAMI, FLORIDA Date: JUN 09 2006

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 The District Director's decision will be withdrawn, and the matter will be remanded to him for further action.

The applicant is a native and citizen of Cuba who filed an 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 determined that the applicant was not eligible for adjustment of status because he had not been inspected and admitted or paroled into the United States. The District Director, therefore, denied the application accordingly. *See District Director's Decision* dated July 20, 2004.

On Notice of Certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. The applicant submits a letter in which he states that on March 5, 1988, at the Miami, Florida, Immigration and Naturalization Service office (now Citizenship and Immigration Service (CIS)) he was issued an Arrival-Departure Record (Form I-94) with indefinite parole. The applicant submits a photocopy of a Form I-94, and requests that his Application to Register Permanent Residence or Adjust Status (Form I-485) be approved.

The AAO notes that the Form I-94 does not state that the applicant was paroled into the United States but it does reflect that the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal, and that employment was authorized indefinitely.

A review of the record of proceedings reveals that on or about February 13, 1988, the applicant entered the United States without inspection at or near El Paso, Texas. The record reflects that on March 5, 1988, the applicant filed a Form I-589. On the same day the Service issued a Form I-94 to the applicant authorizing employment. On June 26, 1989, the applicant 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 stated 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 an alien from custody, 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 an alien from custody, 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.

The applicant, in this case, presented himself to the INS on March 5, 1988, when he filed a Form I-589 and was issued a Form I-94, and on June 16, 1989, when he was interviewed for asylum status. By applying for asylum and presenting himself to the INS the applicant surrendered himself into Service custody. The applicant was subsequently released from Service custody pending a final determination of his asylum application. Therefore, pursuant to the Commissioner's policy, the applicant has been paroled into the United States.

Based on the above, the AAO finds that the applicant is eligible for adjustment of status to permanent residence pursuant to section 1 of the CAA of November 2, 1966, if no other inadmissibility exists.

The record of proceeding reveals that the applicant has a criminal record. This issue has not been pursued by the Director.

Accordingly, the District Director's decision will be withdrawn and the record will be remanded to him in order to review the file and determine if the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of a crime involving moral turpitude, or section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II) for having been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation relating to a controlled substance.

ORDER: The District Director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion.