



U.S. Citizenship  
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Services

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FILE:



Office: MIAMI, FLORIDA (JACKSONVILLE)

Date: **AUG 30 2007**

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 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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Officer in Charge, Jacksonville, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who filed this application for adjustment of status to that of a lawful permanent resident under Section 1 of Pub. L. 89-732 (November 2, 1966), as amended, the Cuban Adjustment Act.

The Cuban Adjustment Act 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 Officer in Charge determined that the applicant was not eligible for adjustment of status because she was not inspected and admitted or paroled into the United States. The Officer in Charge, therefore, denied the application and certified the decision to the AAO. *Decision of the Officer in Charge*, dated April 14, 2005.

A review of the record reveals that the applicant entered the United States without inspection. *Form I-485*. She married her husband on November 21, 2001. *Marriage certificate*. The applicant's husband is a Cuban citizen. *Lawful Permanent Resident Card*; *See Also Form I-485*. The AAO notes that the applicant's husband became a lawful permanent resident on May 24, 1995.

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 of the legacy Immigration and Naturalization Service (INS), now Citizenship and Immigration Service (CIS), issued a memorandum setting forth CIS 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, 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, adjustment under the Cuban Adjustment Act 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 adjustment under the Cuban Adjustment Act unless the alien first surrenders himself or herself into the custody of the appropriate immigration authority and is then released from custody pending a final determination of his or her admissibility.

The Commissioner concluded that a release from custody of an alien who is an applicant for admission because the alien is present in the United States without having been admitted is a parole. This conclusion applies even if the 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 of the Act. When an

alien who is an applicant for admission because he or she is present without inspection is released from custody, the Form I-94 should bear the standard annotation that shows the alien has been paroled under section 212(d)(5)(A).

In a footnote, the Commissioner added that any alien who is an applicant for admission because he or she is present without inspection who is released without a parole Form I-94 will be issued a parole Form I-94 upon the alien's asking for one and establishing that he or she is the alien who was released.

It should also be noted that Cubans—along with their spouses and children—who arrive at other than designated ports of entry into the United States are eligible for parole, as well as eventual adjustment of status to that of permanent resident, under the Cuban Adjustment Act. *News Release, Clarification of Eligibility for Permanent Residence Under the Cuban Adjustment Act, U.S. Department of Justice, Immigration and Naturalization Service, dated April 26, 1999.*

In the present case, the record does not include any documentation that the applicant surrendered herself into Service custody and was subsequently released.

An applicant must demonstrate by a preponderance of the evidence that she is eligible for the benefit sought. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, places the burden of proof upon the applicant to establish that eligibility. The applicant has not met her burden of proof. The decision of the District Director to deny the application will be affirmed.

ORDER:       The District Director's decision is affirmed.