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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEWARK, NEW JERSEY

Date:

NOV 29 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.

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, Newark, New Jersey, 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 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 record reflects that on August 12, 2005 the applicant notified Citizenship and Immigration Services (CIS) that his address had changed. On December 5, 2005 the CIS office in Newark, New Jersey sent the applicant an appointment notice at his new address, scheduling him for an interview on January 17, 2006 regarding his application for adjustment of status. The applicant failed to appear for this appointment. Accordingly, the District Director denied the applicant's application for status as a permanent resident under the regulation at 8 C.F.R. § 103.2(b)(13).

8 C.F.R. § 103.2(b) states in pertinent part:

(13) Effect of failure to respond to a request for evidence or appearance. If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned, and, accordingly, shall be denied. Except as provided in § 335.6 of this chapter, if an individual requested to appear for fingerprinting or for an interview does not appear, the Service does not receive his or her request for rescheduling by the date of the fingerprinting appointment or interview, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied.

The AAO notes that the regulation at 8 C.F.R. § 335.6 relates to naturalization candidates and does not relate to the applicant in the present matter.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. The applicant did not submit any additional brief or written statement. Therefore, based on the applicant's failure to appear for his appointment regarding his application for status as a lawful permanent resident and the absence of any evidence that he attempted to reschedule the date of that appointment or withdraw the Form I-485, the AAO finds that the applicant abandoned his adjustment application and that, accordingly, the application must be denied pursuant to the regulatory requirement at 8 C.F.R. § 103.2(b)(13).

An applicant must demonstrate by a preponderance of the evidence that he 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



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applicant to establish that eligibility. The applicant has not met his burden of proof in this particular case. The decision of the District Director to deny the application will be affirmed.

ORDER: The District Director's decision is affirmed.