

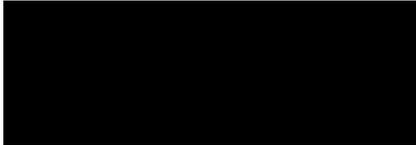
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U.S. Department of Homeland Security  
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U.S. Citizenship  
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Services



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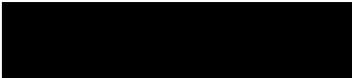
FILE:



Office: Miami, FL

Date: NOV 02 2004

IN RE:



APPLICATION:

Application for Permanent Residence Pursuant to Section 202 of the Immigration Reform and Control Act of 1986 as it pertains to Cuban-Haitian Adjustment (P.L. 99-603)

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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Miami, Florida. The appeal was dismissed by the Administrative Appeals Office (AAO). It is now before the AAO on a motion to reopen. The motion will be rejected.

The applicant is a native and citizen of Haiti who filed an application for adjustment of status to lawful permanent resident under section 202 of the Immigration Reform and Control Act of 1986 as it pertains to Cuban-Haitian Adjustment applicants.

Section 202 Cuban-Haitian Adjustment provides, in part:

(a) Adjustment of Status--The status of any alien described in subsection (b) may be adjusted by the Attorney General, in the Attorney General's discretion and under such regulations as the Attorney General may prescribe, to that of an alien lawfully admitted for permanent residence if--

(1) the alien applies for such adjustment within two years after the date of the enactment of this Act;

(2) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence. . . .

(b) Aliens Eligible for Adjustment of Status--The benefits provided by subsection (a) shall apply to any alien--

(1) who has received an immigration designation as a Cuban/Haitian Entrant (Status Pending) as of the date of the enactment of this Act, or

(2) who is a national of Cuba or Haiti, who arrived in the United States before January 1, 1982, with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982, and who (unless the alien filed an application for asylum with the Immigration and Naturalization Service before January 1, 1982) was not admitted to the United States as a nonimmigrant.

The District Director found the applicant inadmissible to the United States pursuant to section 212(a)(3) the Immigration and Nationality Act (the Act) as an alien who has had one or more attacks of insanity. Accordingly, the District Director concluded that the applicant was ineligible for adjustment of status and denied the application. See *Decision of District Director*, dated May 13, 1988.

On appeal, the applicant stated that he disagreed with the District Director's decision. The applicant offered no explanation or evidence to support his position. Accordingly, the AAO dismissed the appeal. See *Decision of the Administrative Appeals Office*, dated January 31, 1989.

Counsel submitted a motion to reopen dated October 29, 1997. Counsel contends that the Immigration Act of 1990 removed section 212(a)(3) of the Act, thus eliminating "one or more attacks of insanity" as a basis of denial. In support of the motion, counsel submitted an affidavit from the applicant and a letter from the applicant's treating physician. In his affidavit, the applicant stated that he has been diagnosed with Schizoaffective Disorder, is receiving counseling, and is not a threat to himself or others. The applicant's physician, Dr. Ricardo Sandoval, described the applicant's treatment and concluded that he is not a threat to himself or to others.

8 C.F.R. § 103.5 provides in pertinent part:

(a) Motions to reopen or reconsider in other than special agricultural worker and legalization cases--

(1) When filed by affected party--

- (i) General. Except where the Board has jurisdiction and as otherwise provided in 8 CFR parts 3, 210, 242 and 245a, when the affected party files a motion, the official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision. Motions to reopen or reconsider are not applicable to proceedings described in § 274a.9 of this chapter. Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

The AAO issued its decision on January 31, 1989. Counsel's motion to reopen is dated October 29, 1997, which is more than eight years after the AAO decision was issued. Counsel has not demonstrated that this delay was reasonable and beyond the control of the applicant. Counsel's letter referred to a change in the law and to the applicant's mental condition, but counsel does not explain how these facts demonstrate that an eight-year delay in filing the motion was reasonable and beyond the control of the applicant. Accordingly, the applicant's motion will be rejected as late.

**ORDER:** The motion to reopen is rejected.