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

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[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date:
SRC-02-035-57071

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.

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. 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 District Director found the applicant inadmissible to the United States because she falls within the purview of section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for a period of more than 180 days but less than one year. The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See District Director's Decision* dated June 28, 2004.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
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> > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such aliens' departure or removal is inadmissible.
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> . . . .
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> (v) Waiver. – The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In his decision the District Director states that the applicant was unlawfully present in the United States from April 22, 2001, the date her authorized stay expired until November 13, 2001, the date the electronic database of the Immigration and Naturalization Service ((INS) now, Citizenship and Immigration Services, (CIS)) show that her Application for Adjustment of Status (Form I-485), was received.

The AAO finds that the District Director erred in stating that the application was received on November 13, 2001. A date stamp on Form I-485 indicates that INS received the Form I-485 on October 22, 2001. This office finds the Director Director's error to be harmless.

The record reflects that the applicant was admitted to the United States with a nonimmigrant visa on October 23, 2000, and was authorized to stay until April 22, 2001. She remained longer than authorized and was unlawfully present in the United States from April 23, 2001, until her Form I-485 was filed. A review of the documentation in the applicant's service file confirms that the Form I-485 was received on October 22, 2001. The applicant thus accrued unlawful presence from April 22, 2001, to October 22, 2001, a period in excess of 180 days but less than one year and is therefore inadmissible under section 212(a)(9)(B)(i)(I) of the Act.

The record further reflects that an Authorization for Parole of an Alien into the United States (Form I-512) was issued to the applicant on April 15, 2002. The record indicates that the applicant departed the United States on an unknown date after the issuance of the Form I-512 and she was paroled back on July 9, 2002, to continue her application for adjustment of status. It was this departure that triggered her unlawful presence. Pursuant to section 212(a)(9)(B)(i)(I) she was barred from seeking admission within three years of the date of her departure.

As stated above, section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, U.S. citizen or lawfully resident spouse or parent.

On February 10, 2003, the applicant appeared for an interview regarding her application for adjustment of status. After she was found inadmissible under section 212(a)(9)(B)(i)(I) of the Act, she was asked if she has a qualifying family member in order to be eligible to file for a waiver under section 212(a)(9)(B)(v) of the Act. The applicant stated that all her relatives reside are Cuban nationals residing in Cuba and therefore she does not have a qualifying family member in order to be eligible to file for a waiver under section 212(a)(9)(B)(v) of the Act.

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.

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that she is eligible for adjustment of status. She has failed to meet that burden. The decision of the District Director to deny the application will be affirmed.

ORDER: The District Director's decision is affirmed.