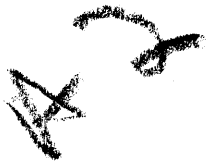
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship and Immigration Services

FILE: Office: MIAMI, FLORIDA Date:

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, 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 determined that the applicant had not been physically present in the United States for one year prior to the filing of the application. The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See District Director's Decision* dated April 29, 2004.

The applicant has provided no statement or additional evidence on notice of certification.

8 C.F.R. § 245.2(a)(2)(ii) provides, in part:

> An application for the benefits of section 1 of the Act of November 2, 1966 is not properly filed unless the applicant was inspected and admitted or paroled into the United States subsequent to January 1, 1959. An applicant is ineligible for the benefits of the Act of November 2, 1966 unless he or she has been physically present in the United States for one year.

The record reflects that the applicant was paroled into the United States on February 18, 2002. On February 15, 2002, less than one year after being admitted into the United States, the applicant filed the application in this matter for adjustment of status under section 1 of the Cuban Adjustment Act.

Consequently, the applicant was not physically present in the United States for one year at the time of filing the adjustment application as required. He is, therefore, ineligible for the benefit sought. The District Director's decision will be affirmed.

This decision, however, is without prejudice to the filing of a new application for adjustment of status, along with supporting documentation and the appropriate fee, now that the applicant has been physically present in the United States for at least one year.

ORDER: The District Director's decision is affirmed.