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

**U.S. Citizenship and Immigration Services**

A2

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: SEP 29 2004

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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**DISCUSSION:** The application was denied by the Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The Acting District Director's decision will be withdrawn, and the application will be approved.

The applicant is a native and citizen of Venezuela 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 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 provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

The Acting District Director determined that the applicant was not eligible for adjustment of status as the child of a native or citizen of Cuba, pursuant to section 1 of the CAA because he was not inspected and admitted or paroled into the United States. The Acting District Director, therefore, denied the application. *See Acting District Director's Decision* dated March 23, 2004.

The applicant was offered an opportunity to submit evidence in opposition to the Acting District Director's findings. The applicant submits a copy of his I-94, which reflects that he ented the United States without inspection on December 17, 1989.

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).

The record reflects that the applicant was included in his mother application for asylum that she filed on March 1, 1990 with the Miami district office. On March 27, 1990, the Service issued an I-94 on behalf of the applicant and authorized employment.

On April 19, 1999, the Commissioner, Immigration and Naturalization Service, INS, issued a memorandum setting forth the Service's 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 (CAA), 8 U.S.C. § 1255. In her memorandum, the Commissioner states that this policy does not relieve the applicant of the obligation to meet all other eligibility requirements. In particular, CAA adjustment 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 CAA adjustment unless the alien first surrenders himself or herself into Service custody and the Service releases the alien from custody pending a final determination of his or her admissibility.

The Commissioner concluded that if the Service releases from custody an alien who is an applicant for admission because the alien is present in the United States without having been admitted, the alien has been paroled. This conclusion applies even if the Service 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. When the Service releases from custody an alien who is an applicant for admission because he or she is present without inspection, the Form I-94 should bear that standard annotation that shows that the alien has been paroled under section 212(d)(5)(A).

In a footnote, the Commissioner added that it may be the case that the Service has released an alien who is an applicant for admission because he or she is present without inspection, without providing the alien with a parole Form I-94. In this case, the Service will issue a parole Form I-94 upon the alien's asking for one, and satisfying the Service that the alien is the alien who was released.

In the present case by applying for asylum and presenting himself to the INS the applicant surrendered himself into Service custody. The applicant was subsequently released from Service custody and was issued an I-94 with employment authorization. Therefore, pursuant to the Commissioner's policy, the applicant has been paroled.

The applicant is eligible for adjustment of status to permanent residence pursuant to section 1 of the CAA of November 2, 1966, and warrants a favorable exercise of discretion. Accordingly, the Acting District Director's decision will be withdrawn, and the application will be approved.

ORDER: The Acting District Director's decision is withdrawn. The application is approved.