U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: ST. PAUL, MINNESOTA 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

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 The District Director's decision will be withdrawn, and the application will be approved.

The applicant is a native and citizen of Spain 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 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 District Director denied the application after determining that the applicant was not eligible for adjustment of status as the child of a native or citizen of Cuba, under section 1 of the CAA because he was admitted into the United States under the Visa Waiver Pilot Program (VWPP). The District Director, therefore, denied the application. *See District Director's Decision* dated December 3, 2002.

The record reflects that the applicant was born on September 15, 1999 in Spain. On June 25, 2001, at the Philadelphia International Airport, the applicant applied for admission under the Visa Waiver Pilot Program (now Visa Waiver Permanent Program (VWPP)) pursuant to section 217 of the Act, U.S.C. 1167. The applicant presented a valid Spanish passport and after being inspected he was admitted into the United States as a nonimmigrant visitor for pleasure.

Referring to 8 C.F.R. § 245.1 the District Director determined that the applicant was not eligible for adjustment of status because aliens admitted to the United States under the VWPP are ineligible for adjustment under section 245 of the Act, 8 U.S.C. § 1255.

The regulation at 8 C.F.R. § 245.1 states in pertinent part:

> (b) Restricted aliens. The following categories of aliens are ineligible to apply for adjustment of status to that of a lawful permanent resident alien under section 245 of the Act. . .
>
> > (8) Any alien admitted as a Visa Waiver Pilot Program visitor under the provisions of section 217 of the Act and part 217 of this chapter other than an immediate relative as defined in section 201(b) of the Act. . .

In addition the Adjudicator's Field Manual Chapter 23.11 states in pertinent part:

(b) Eligibility. In order to be granted adjustment under the CAA, an applicant must:
(1) Be a native or citizen of Cuba. An applicant could meet this requirement through any one of several different means. He or she could be:

A person who was born in Cuba, and is still a citizen of Cuba. . . .

(2) Have been inspected and admitted or paroled into the U.S. after January 1, 1959. Any inspection and admission or parole, regardless of the classification of admission or purpose of parole, meets this requirement. See generally Matter of Alvarez-Riera, 12 I. & N. Dec. 112 (BIA 1967); Matter of Rodriguez, 12 I. & N. Dec. 549 (R.C. 1967); Matter of Martinez-Monteagudo, 12 I. & N. Dec. 688 (R.C. 1968).

. . . .

(d) Bars to Adjustment. The bars to adjustment enumerated in section 245(c) of the Act are inapplicable. Thus, the following aliens may seek adjustment under the CAA:

. . . .

Aliens who were admitted as nonimmigrant visitors without visas under section 217 of the Act (the Visa Waiver Permanent Program, formerly known as the Visa Waiver Pilot Program).

The applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. The applicant's mother submits a statement in which she states that the applicant is eligible to adjust status because he applied for adjustment of status under section 1 of the CAA and not under section 245 of the Immigration and Nationality Act (the Act).

It is clear from Service regulations and from the statute that an alien admitted to the United States under the provisions of section 217 of the Act, is not eligible for adjustment of status to that of a lawful permanent resident under section 245 of the Act. The applicant in this case, however is applying for adjustment of his status to permanent residence under section 1 of the CAA and not under section 245 of the Act. There is no prohibition against an alien who has been admitted to the United States under the VWPP to adjust status under section 1 of the CAA.

The applicant in this case is eligible for adjustment of status as the child of a native or citizen of Cuba, pursuant to section 1 of the CAA of November 2, 1966. The record of proceedings reflects that the applicant was inspected and admitted into the United States subsequent to January 1, 1959, has been physically present in the United States for at least one year and is residing with his native Cuban mother. The District Director did not raise any other basis for denial, nor are there known grounds of inadmissibility. Accordingly, the District Director's decision will be withdrawn, and the application will be approved.

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