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

PUBLIC COPY

[redacted]

A2

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUN 09 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, who certified her decision to the Administrative Appeals Office (AAO) for review. The 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 Director determined that the applicant was not eligible for adjustment of status because he was not inspected and admitted or paroled into the United States and denied the application accordingly. *See Director's decision* dated April 5, 2005.

On his Application to Register Permanent Residence or Adjust Status (Form I-485), filed on October 22, 2002, the applicant claimed to have entered the United States on December 18, 2000, as a non-immigrant visitor for pleasure.

On September 8, 2005, the Director requested that the applicant provide a copy of his Arrival-Departure Record (Form I-94), or other documentary evidence to establish that he was inspected and admitted or paroled into the United States. The applicant was given twelve (12) weeks to respond.

On April 5, 2006, the Director denied the application because the applicant failed to establish eligibility for the benefit sought. The applicant was offered an opportunity to submit evidence in opposition to the Director's findings. No additional evidence has been entered into the record.

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 applicant bears the burden of proving that he in fact presented himself for inspection as an element of establishing eligibility for adjustment of status. *Matter of Areguillin*, 17 I&N Dec. 308 (BIA 1980). The applicant has failed to meet that burden.

It is, therefore, concluded that the applicant was not inspected and admitted or paroled into the United States. There is no waiver available to an alien found statutorily ineligible for adjustment of status on the basis that he was not inspected and admitted or paroled into the United States. Therefore, the applicant is not eligible for the benefit sought. The decision of the Director to deny the application will be affirmed.

ORDER: The Director's decision is affirmed.