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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: ORLANDO, FL

Date:

MAY 14 2008

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 APPLICANT:

[REDACTED]

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 Field Office Director, Orlando, Florida who certified his decision to the Administrative Appeals Office (AAO) for review. The Field Office Director's decision is affirmed.

The applicant is a native and citizen of Cuba who filed the 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 Field Office Director found the applicant did not qualify for adjustment of status under the CAA because she was paroled into the United States on April 30, 2006 and filed her Form I-485, Application to Register Permanent Residence or Adjust Status on September 19, 2006 prior to having been physically present in the United States for at least one year. *See Field Office Director's Decision* dated January 14, 2008.

Counsel for the applicant states that on August 3, 2006 the applicant and her mother attended a Master Calendar hearing before an immigration judge in Orlando, Florida. *Counsel's statement*, dated February 5, 2008. At that hearing, the applicant and her mother stated an intention to file a Form I-485 applications and supporting documentation under the CAA. *Id.* The immigration court instructed the applicant and her mother to send copies of the Form I-485 applications that they would be filing with the immigration court to the Texas Service Center in order to obtain proof of payment and produce Form I-485 receipts in immigration court. *Id.*; *See also Instructions for Submitting Certain Applications in Immigration Court and for Providing Biometric and Biographic Information to U.S. Citizenship and Immigration Services.* The immigration court instructions stated not to submit any documents other than the completed form. *Id.* The applicant complied with the instructions and sent a copy of her Form I-485 application and the required fee to the Texas Service Center. *Counsel's statement*, dated February 5, 2008; *See also Form I-485*, stamped September 19, 2006. At a Master Calendar hearing on December 7, 2006 the immigration judge acknowledged that the immigration court did not have jurisdiction to adjust the status of an arriving alien. *Counsel's statement*, dated February 5, 2008. As a result, the immigration judge terminated proceedings. *Order of the Immigration Judge*, dated December 7, 2006. On December 17, 2007 the applicant and her mother had an interview with the Orlando Field Office regarding their Form I-485 applications. *Counsel's statement*, dated February 5, 2008. On that date, counsel asserts that the applicant and her mother submitted their medical examination forms. *Id.* Prior to their interview, counsel asserts that additional supporting documentation had been sent to the Orlando Field Office. *Id.* On January 14, 2008 the Orlando Field Office denied the Form I-485 applications for the applicant and her mother and certified their cases to the AAO. *Form I-485; Notice of Certification*, dated January 14, 2008.

The AAO notes that the applicant was paroled into the United States on April 30, 2006 (*Form I-94*) and that she is a Cuban citizen (*See Cuban birth certificate*). While the AAO acknowledges that the applicant was complying with the instructions she received from the immigration court in Orlando, Florida, it notes that the applicant's Form I-485 application was submitted to the Texas Service Center and a fee was received on September 19, 2006. Pursuant to 8 C.F.R. § 103.2(a)(7), the date in which an application or petition is received by CIS is the date of filing. Accordingly, the application was filed on September 19, 2006.

The regulation at 8 C.F.R. § 103.2(b)(12) states:

(12) Effect where evidence submitted in response to a request does not establish eligibility at the time of filing. An application or petition shall be denied where evidence submitted in response to a request for evidence does not establish filing eligibility at the time the application or petition was filed.

As the applicant filed the Form I-485 application on September 19, 2006, prior to having been physically present in the United States for at least one year, the AAO finds that the applicant is ineligible to adjust her status under the CAA.

The decision of the Field Office Director to deny the application will be affirmed. An applicant must demonstrate by a preponderance of the evidence that she is eligible for the benefit sought. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, places the burden of proof upon the applicant to establish that eligibility. The applicant has not met her burden of proof in this particular case.

ORDER: The Field Office Director's decision is affirmed.