U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: ORLANDO, FLORIDA Date: JUN 29 2009

MSC 07 324 19000

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Orlando, Florida, who certified her decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The application will be denied.

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.

A review of the record reveals the following information and procedural history. The applicant states that he left Cuba during the Mariel boatlift era in April 1980 and was sent to Spain. The applicant indicates he was granted asylum in Spain. He obtained a Spanish travel document (No. 633/80) issued on August 16, 1980 that was valid for one year. The travel document includes a stamp showing that he entered St. Maarten on December 2, 1980. The Form I-215B, Record of Sworn Statement in Affidavit Form, includes the applicant's statement: "I last entered the United States at San Juan, Puerto Rico on December 11, 1980 as a stowaway. When I arrived in the United States I did not have a visa to enter and I was not inspected or admitted by a U.S. Immigration Officer." The Form I-215B is signed by the applicant, is dated December 15, 1980, and was sworn to and subscribed in Miami, Florida. On a Form I-213, Record of Deportable Alien, dated December 15, 1980, a legacy United States Immigration and Naturalization Services (INS) officer noted that the applicant had indicated that he entered the United States in San Juan, Puerto Rico as a stowaway on a Spanish cargo vessel at Cadiz, Spain on November 19, 1980, arriving in Puerto Rico on December 11, 1980. The applicant was issued a document on December 15, 1980 indicating that he had entered the United States on December 11, 1980 at SAJ (San Juan, Puerto Rico) as a stowaway, that he "boarded at Spain," and that he was born in Cuba. The document bears a stamp noting "Employment Authorized 2-15-81." On December 22, 1980, the applicant was issued a document indicating that he had violated the terms of his admission as a nonimmigrant and permission previously granted to remain in the United States is rescinded. The document also noted that the applicant had until February 10, 1981 to depart the United States.

In March 1988, the applicant filed a Form I-485, Application for Permanent Residence, indicating that he entered the United States at SAJ by boat as a stowaway. The application was denied on October 4, 1988, as abandoned. On September 24, 1997, the applicant filed a second Form I-485, Application to Register Permanent Residence or Adjust Status, under section 1 of the CAA. On this Form I-485, at Part 3, the applicant stated that he last entered the United States at New York City and indicated that he entered without inspection but also checked "yes" that he was inspected. The Form I-485 was denied on August 11, 2000 as the applicant had not been inspected and admitted or paroled into the United States, but had entered as a stowaway. In July 2007, the applicant withdrew

an asylum application that had been pending since December 15, 1980, in order to again apply for adjustment of status pursuant to section 1 of the CAA. On July 30, 2007 the applicant filed the Form I-485 which is the subject of this certification.

The applicant submitted his sworn statement dated November 4, 2008 at an interview before a United States Citizenship and Immigration Services (USCIS) officer. In the sworn statement, the applicant explained that he left Cuba during the Mariel era but was sent to Spain, not the United States. He declared that he stayed in Spain for only a couple of months and then was able to get travel documents to St. Martin and from there he was given a ride on a private plane to Puerto Rico where he bought a ticket to Miami, Florida. The applicant indicated that "[a]t that point, I was told by someone to say that I entered as a stowaway, even though that was not true." The applicant declared that at no time did he hide out on a ship or a plane and that the person who flew him and his ex-wife into Puerto Rico did so knowingly.

In an April 2, 2009 decision, the director determined that the applicant is an alien who falls within the purview of section 212(a)(6)(D) of the Act, and is inadmissible and that the applicant's I-485 filed pursuant to section 1 of the CAA must be denied. The director certified her decision to the AAO for review. On notice of certification, the applicant was offered an opportunity to submit evidence. No additional evidence has been entered into the record and the record is considered complete.

Section 212(a) of the Act states in pertinent part:

> (a) Classes of Aliens Ineligible for Visas or Admission – Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to visas and ineligible to be admitted to the United States:
>
> (6)(D) Stowaways – Any alien who is a stowaway is inadmissible.

There is no waiver provided in the Act for an individual who enters the United States as a stowaway.

The record includes the applicant's conflicting statements regarding his entry into the United States. The AAO observes that the applicant initially indicated that he was a stowaway to the legacy INS officer and on several forms filed with legacy INS. In the second filed Form I-485, the applicant presented conflicting information indicating that he entered the United States at New York City and noting that he entered without inspection as well as checking a box indicating that he had been inspected. Upon review of the record, the director in that matter denied the applicant's adjustment application finding that the applicant entered as a stowaway and without inspection, admission, or parole. Only upon the applicant's third Form I-485 does the applicant state that he entered the United States in Puerto Rico and was "paroled." The applicant also submitted his November 4, 2008 statement changing his initial claim that he entered the United States as a stowaway, explaining that he had made this misrepresentation on the advice of others. The applicant further submitted his parents' statement to confirm his new claim; however, as his parents state in their affidavit that they did not come to the United States until 2000, their statement does not corroborate the applicant's new claim, nor do the applicant's parents indicate that they personally observed the applicant's entry into the United States.

The applicant's statement changing his testimony almost 28 years after his initial entry and after the applicant became aware that entering the United States as a stowaway precluded his ability to adjust status under section 1 of the CAA is not probative. The AAO does not find the applicant's explanation in 2008 regarding his misrepresentation to legacy INS sufficient to establish that he had been inspected and admitted or paroled into the United States in December 1980.

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. The applicant has not met his burden. Accordingly, the AAO affirms the decision of the director to deny the applicant's application to adjust status pursuant to section 1 of the CAA.

ORDER: The director's decision is affirmed. The application is denied.