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

U.S. Citizenship and Immigration Services

L7

[redacted]

FILE: [redacted] Office: [redacted] Date: JUL 09 2010

MSC 08 262 16478

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 202 of the Nicaraguan Adjustment and Central American Relief Act, P.L. 105-100, (NACARA)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

[redacted]

Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Orlando, Florida, denied the application to adjust status and 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 Brazil 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 applicant is seeking classification as the spouse of a Cuban citizen who became a lawful permanent resident pursuant to section 1 of the CAA. The director denied the application because the applicant's spouse did not adjust her status under section 1 of the CAA and, therefore, the applicant could not derive lawful permanent residence status through the provisions of section 1 of the CAA. In response to the director's notice of certification, counsel submits a brief and argues that the applicant's spouse's adjustment of status pursuant to section 202 of the Nicaraguan Adjustment and Central American Relief Act, P.L. 105-100, (NACARA) is an "admission" as that term is described in section 1 of the CAA.

Section 1 of 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.

A review of the record provides the following facts and procedural history. The applicant entered the United States on May 1, 2001 as a B-2 visitor for pleasure. The applicant's spouse is a native and citizen of Cuba who adjusted her status to that of a lawful permanent resident on May 9, 2002 pursuant to section 202 of the Nicaraguan Adjustment and Central American Relief Act, P.L. 105-100, (NACARA). The applicant's spouse indicated on her Form I-485, Application to Register Permanent Residence or Adjust Status, that she initially entered the United States on December 9, 1987 without inspection. The applicant and his spouse were married in Kissimmee, Florida on June 3, 2008. On June 16, 2008, the applicant filed the instant Form I-485 with U.S. Citizenship and Immigration Services (USCIS), seeking to adjust his status as the spouse of a Cuban described in section 1 of the CAA.

In an August 17, 2009 decision, the director determined that the applicant was not eligible for adjustment of status under section 1 of the CAA because the applicant's spouse, through whom the applicant is seeking adjustment of status, was not inspected, admitted or paroled into the United States and, therefore, was not an alien described in section 1 of the CAA. The director noted that, although the applicant's spouse was admitted as a lawful permanent resident pursuant to section 202 of NACARA, because the applicant's spouse initially entered the United States without inspection, she would not have been eligible for the benefits of the CAA. The director denied the application

and certified her decision to the AAO for review. The director informed the applicant that he had 30 days to supplement the record with any evidence that he wished the AAO to consider.

In response to the director's notice of certification, counsel argues that the applicant is able to adjust his status pursuant to section 1 of the CAA because his spouse was admitted into the United States as a lawful permanent resident. Counsel refers to two Board of Immigration Appeals (BIA) decisions to support his claims: *Matter of Rosas*, 22 I&N Dec. 616 (BIA 1999); and *Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006). According to counsel, there is no legal distinction in the Immigration and Nationality Act (the Act) between a nonimmigrant admission versus an immigrant admission and, therefore, the applicant's spouse, who is a Cuban national and was admitted to the United States as a lawful permanent resident, is an alien described in section 1 of the CAA.

The applicant is not eligible to adjust his status under section 1 of the CAA. The two BIA decisions that counsel submits in response to the notice of certification are not on point, as they discuss the term "admission" in the Immigration and Nationality Act; the applicant is seeking to adjust his status under section 1 of the CAA, not under section 245 or any other provision of the Act. The CAA clearly states that the provisions of section 1 shall be applicable to the spouse and child of any alien described therein. In order for the applicant to be eligible for the benefits of section 1 of the CAA, he or she must be the spouse of a native or citizen of Cuba who has been inspected, admitted or paroled into the United States, and who has been physically present in the United States for at least one year. See *Matter of Milian*, 13 I&N Dec. 480 (Acting Reg. Comm. 1970)(applying the physical presence requirement as amended by the Refugee Act of 1980, Pub. L. No. 96-212, sec. 203(i), 94 Stat. 102, 108 (1980)).

In reviewing the status of an alien applying for benefits under section 2 of the CAA, the Regional Commissioner determined that an applicant who has been admitted as an immigrant in possession of a valid immigrant visa had never "originally" arrived in the United States as a nonimmigrant or parolee subsequent to January 1, 1959. In reaching this conclusion, the Regional Commissioner stated that "[s]ection 1 obviously refers to those Cuban refugees who were inspected and admitted as nonimmigrants or paroled into the [redacted]
143 (Reg. Comm. 1967), *reaffirme*[redacted]

Here, the applicant's spouse was not inspected and admitted as a nonimmigrant or paroled into the United States. She entered the United States without inspection in 1987 and adjusted her status to that of a lawful permanent resident under section 202 of NACARA. Accordingly, the applicant's spouse is not an alien described in section 1 of the CAA, and the benefits of section 1 of the CAA are not available to the applicant.

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 director's decision is affirmed.

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