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U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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FILE:



Office: MIAMI, FLORIDA

Date: JAN 18 2005

IN RE:

Applicant:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The District 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 District 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. The District Director, therefore, denied the application. See *District Director's decision* dated December July 1, 2004.

The applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. No additional evidence has been entered into the record.

The application for adjustment of status, filed on September 27, 2001, shows that the applicant claimed to have entered the United States near McAllen, Texas, on January 16, 1993, and that he was not inspected by a Service officer upon entry. The record further reflects that on February 26, 1993, the applicant filed a request for asylum in the United States but never appeared for an asylum interview.

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 District Director to deny the application will be affirmed.

The applicant's service file reveals that the applicant was paroled into the United States on January 17, 2003. This decision is without prejudice to the filing of a new application for adjustment of status, along with supporting documentation and the appropriate fee, now that the applicant has been paroled and physically present in the United States for at least one year.

**ORDER:** The District Director's decision is affirmed.