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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

A2

FILE:



Office: MIAMI, FLORIDA

Date: JUN 06 2005

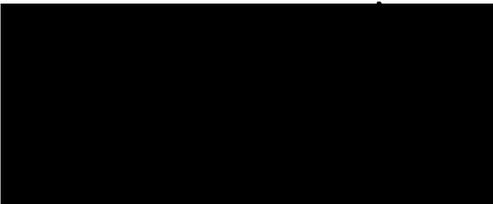
IN RE:

Applicant:



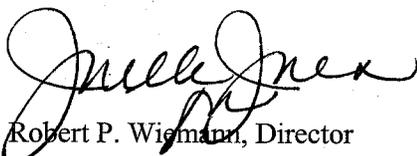
APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF PETITIONER:



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. Wismann, 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 September 21, 2004.

On notice of certification the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. Counsel submits a letter stating that the applicant entered the United States on or about October 24, 1988, without inspection in Texas. Counsel requests that Citizenship and Immigration Services (CIS) issue a parole in order for the applicant to be able to apply for lawful permanent residence under the CAA of November 2, 1966. Counsel submits a copy of the applicant's birth certificate with an English translation.

The record reveals that an Application to Register Permanent Resident or Adjust Status (Form I-485) was filed on September 20, 2002. On his Form I-485 the applicant claims to have entered the United States on June 14, 1998, without being inspected by a Service officer. A search of CIS' electronic databases did not reveal any other applications or petitions filed on the applicant's behalf.

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 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.

ORDER: The District Director's decision is affirmed.