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U.S. Citizenship  
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Services

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FILE:



Office: MIAMI, FLORIDA

Date: JUN 16 2005

IN RE:

Applicant:



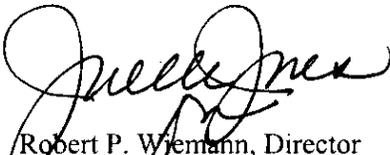
APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

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. Wemmann, 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 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 District Director found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(6)(D) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(D). The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See District Director's Decision* dated September 24, 2004.

On notice of certification, counsel submits a brief in which he states that Citizenship and Immigration Services (CIS) erred in denying the applicant's application for adjustment of status under section 1 of the CAA of November 2, 1966. Counsel refers to Commissioner Meissner's memorandum, dated April 19, 1999, in which she concluded that if the Service releases from custody an alien who is an applicant for admission because the alien is present in the United States without having been admitted, the alien has been paroled. Counsel asserts that since the applicant was released from Service custody when he arrived in the United States on November 7, 1998, his release constitutes a parole as a matter of law. Furthermore counsel states that on December 2, 1998, the applicant was issued a parole pending his asylum hearing. Counsel concludes that since the applicant was paroled into the United States he is eligible for adjustment of status under the CAA of November 2, 1966.

In the instant case the District Director denied the application for adjustment of status because the applicant is inadmissible pursuant to section 212(a)(6)(D) of the Act and not because he was not paroled into the United States.

A review of the record of proceedings reveals that on November 7, 1998, at Miami, Florida the applicant attempted to enter the United States as a stowaway aboard a cruise ship. The applicant was detained pending a credible fear interview with an asylum officer. On December 2, 1998, the applicant was released from Service custody and was paroled into the United States pending a final asylum hearing.

On April 19, 1999, the Commissioner, Immigration and Naturalization Service, INS, issued a memorandum setting forth the Service's policy concerning the effect of an alien's having arrived in the United States at a place other than a designated port of entry on the alien's eligibility for adjustment of status under the Cuban Adjustment Act of 1966 (CAA), 8 U.S.C. § 1255. The Commissioner concluded that if the Service releases from custody an alien who is an applicant for admission because the alien is present in the United States

without having been admitted, the alien has been paroled. In her memorandum, the Commissioner states that this policy does not relieve the applicant of the obligation to meet all other eligibility requirements.

As noted above on November 7, 1998, the applicant attempted to enter the United States as a stowaway, a fact counsel does not dispute.

Section 212 of the Act states in pertinent part, that:

(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 receive visas and ineligible to be admitted to the United States:

. . . .

(6) Illegal entrants and immigration violators. -

. . . .

(D) Stowaways.- Any aliens who is a stowaway is inadmissible.

Although the applicant was paroled into the United States on December 2, 1998, and eligible to apply for adjustment of status pursuant to section 1 of the CAA of November 2, 1966, he is inadmissible to the United States, pursuant to section 212(a)(6)(D) of the Act. There is no waiver available to an alien found inadmissible under this section of the Act and thus the applicant is ineligible for adjustment of status to permanent residence, pursuant to section 1 of the CAA of November 2, 1966.

The decision of the District Director to deny the application will be affirmed.

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