U.S. Department of Homeland Security
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PUBLIC COPY

U.S. Citizenship and Immigration Services

A2

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: NOV 21 2005

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.

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 The District Director's decision will be withdrawn, and the application approved.

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 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 October 28, 2004.

On Notice of Certification the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. The applicant submits a letter in which he states that the immigration office in Elizabeth, New Jersey, issued him a parole document on August 20, 1985. The applicant states that he presented the parole document to the interviewing officer who advised him to request a replacement due to the condition of the original parole document. According to the applicant he did so, and received an Arrival-Departure Record (Form I-94) that indicates that he was paroled on February 4, 2005.

A review of the record of proceedings reveals that on December 5, 1985, the applicant entered the United States without inspection at or near McAllen, Texas. The record reflects that on July 1, 1986, the applicant applied for asylum at the Miami, Florida district office. The applicant never appeared for an asylum interview and on June 2, 1989, his asylum application was terminated for lack of prosecution. On July 26, 1990, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) under the CAA. On October 17, 1990, the applicant appeared for an interview at the Newark, New Jersey district office regarding his adjustment application. After the applicant was informed that he could not adjust his status because he entered without inspection, he voluntarily withdrew the Form I-485. The record of proceedings does not reveal any parole document having been issued on August 20, 1985. The AAO notes that on his asylum application the applicant states that he entered the United States on December 5, 1985, and therefore it is impossible for the New Jersey office to have issued a parole document on August 20, 1985.

When an alien enters the United States within the limits of a city designated as a port of entry, but at a point where immigration officers are not located, the applicable charge is entry without inspection. *See Matter of O-*, 1 I&N Dec. 617 (BIA 1943); *See also Matter of Estrada-Betancourt*, 12 I&N Dec. 191 (BIA 1967); *Matter of Pierre*, 14 I&N Dec. 467 (BIA 1973).

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. In her memorandum, the Commissioner states that this policy does not relieve the applicant of the obligation to meet all other eligibility requirements. In particular, CAA adjustment is available only to applicants who have been "inspected and admitted or paroled into the United States." An alien who is present without inspection, therefore, is not eligible for CAA adjustment unless the alien first surrenders himself or herself into Service custody and the Service releases the alien from custody pending a final determination of his or her admissibility.

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. This conclusion applies even if the Service officer who authorized the release thought there was a legal distinction between paroling an applicant for admission and releasing an applicant for admission under section 236. When the Service releases from custody an alien who is an applicant for admission because he or she is present without inspection, the Form I-94 should bear that standard annotation that shows that the alien has been paroled under section 212(d)(5)(A).

In a footnote, the Commissioner added that it may be the case that the Service has released an alien who is an applicant for admission because he or she is present without inspection, without providing the alien with a parole Form I-94. In this case, the Service will issue a parole Form I-94 upon the alien's asking for one, and satisfying the Service that the alien is the alien who was released.

The applicant, in this case, presented himself to the INS on October 17, 1990, for an adjustment of status interview. By applying for adjustment of status and presenting himself to the INS the applicant surrendered himself into Service custody. The applicant was subsequently released from Service custody and thus pursuant to the Commissioner's policy, the applicant has been paroled into the United States.

The applicant is eligible for adjustment of status to permanent residence pursuant to section 1 of the CAA of November 2, 1966, and warrants a favorable exercise of discretion. Accordingly, the District Director's decision will be withdrawn, and the application will be approved.

ORDER: The District Director's decision is withdrawn. The application is approved.