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AZ

FILE: *S*



Office: MIAMI, FLORIDA

Date: **OCT 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 APPLICANT: 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.

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 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, pursuant to section 1 of the CAA of November 2, 1966, because he was not inspected and admitted or paroled into the United States as a nonimmigrant. The District Director denied the application accordingly.

On notice of certification, 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 record reflects that on July 21, 1995, the applicant was admitted to the United States for permanent residence as a CR-1 (spouse of a citizen of the United States, conditional status). The record further reflects that the applicant never applied for removal of the conditional residency and his status expired on July 20, 1997. On March 20, 2003, the applicant filed for adjustment of status under section 1 of the CAA.

The statute clearly states that in order for an applicant to be eligible for the benefits of section 1 of the CAA of November 2, 1966, he or she must be a native or citizen of Cuba who has been inspected and 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 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 of November 2, 1966, the Regional Commissioner determined that an applicant who had 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 United States." *Matter of Benguria Y Rodriguez*, 12 I&N Dec. 143 (Reg. Comm. 1967), *reaffirmed by Matter of Baez Ayala*, 13 I&N Dec. 79 (Reg. Comm. 1968).

In this case, the applicant was not inspected and admitted as a nonimmigrant or paroled into the United States, but was admitted instead as a conditional lawful resident with a valid immigrant visa. Therefore, the benefits of section 1 of the CAA are not available to the applicant.

Accordingly, 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.