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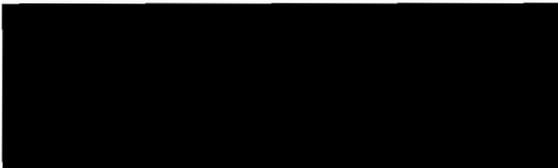


FILE: [REDACTED] Office: TAMPA, FLORIDA Date: **MAY 19 2006**

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:



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, Chief
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 Director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed an Application to Register Permanent Residence or Adjust Status (Form I-485) 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 had not been physically present in the United States for one year prior to the filing of the application. The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See District Director's Decision* dated August 18, 2004.

On notice of certification, counsel submits a brief in which he does not dispute the fact that the applicant filed an application for adjustment of status before she was physically present in the United States for a least one year, but states that when the Service reviewed her application she had been physically present in the United States for more than two years. In addition, counsel states that the intent of the legislation did not require one year of physical presence prior to filing the application. He asserted that if Congress intended the one year physical presence requirement prior to the application, it would have specifically mentioned it in the law. Furthermore, counsel refers to sections of the Immigration and Naturalization Act (the Act) in which it is specified that physical presence requirements are to be fulfilled prior to the date of an application. He further refers to the regulations at 8 C.F.R. and states that the applicant fulfilled her requirements of having been inspected and admitted or paroled into the United States, and that after properly filling her application she fulfilled the prerequisite of being physically present in the United States for one year.

Counsel's statements are not persuasive. Applications for adjustment of status are regulated by title 8 U.S.C. § 1255, which states in pertinent part:

Adjustment of status of nonimmigrant to that of person admitted for permanent residence.

(a) Status as person admitted for permanent residence on application and eligibility for immigrant visa. The status of an alien who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if:

(1) the alien makes an application for such adjustment,

(2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and

(3) an immigrant visa is immediately available to him at the time his application is filed.

The requirement of one year of physical presence in the United States prior to the filing of Form I-485 is found in chapter 23.11 of the Adjudicator's Field Manual (AFM) and in the instructions on the Form I-485.

Chapter 23.11 of the AFM states in pertinent part:

(b) Eligibility. In order to be granted adjustment under the CAA, an applicant must:

. . . .

(3) Have at least one year of aggregate physical presence in the U.S. before applying for benefits under section 1 of the CAA . . .

The instructions on Form I-485 states in pertinent part:

Based on Cuban citizenship or nationality.

You may apply to adjust status if:

You are a native or citizen of Cuba, were admitted or paroled into the United States after January 1, 1959, and thereafter have been physically present in the United States for at least one year. . .

In addition, the regulation at 8 C.F.R. § 103.2(a) state in pertinent part:

Every application . . . shall be executed and filed in accordance with the instructions on the form, such instructions . . . being hereby incorporated into the particular section of the regulations in this chapter . . .

The record reflects that the applicant was paroled into the United States on February 4, 2002. On December 10, 2002, less than one year after being admitted into the United States, the applicant filed the application in this matter for adjustment of status under section 1 of the CAA of November 2, 1966.

Consequently, the applicant did not demonstrate prima facie edibility for adjustment of status because she was not physically present in the United States for one year at the time of filing the adjustment application and, therefore, ineligible for the benefit sought.

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that she is eligible for adjustment of status. She failed to meet that burden. Accordingly, the District Director's decision will be affirmed.

This decision, however, 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 physically present in the United States for at least one year.

ORDER: The Director's decision is affirmed.