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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: NEWARK, NEW JERSEY Date: **MAR 05 2009**

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)

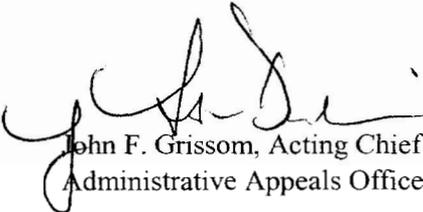
ON BEHALF OF APPLICANT:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director (FOD), Newark, New Jersey, who certified her decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The application will be denied.

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. [Emphasis added]

A review of the record reveals the following facts and procedural history: On January 8, 2006, the applicant attempted to enter the United States at or near Hidalgo, Texas at which time she was apprehended by an officer of Customs and Border Protection (CBP). The CBP officer took a sworn statement from the applicant during which time the applicant requested asylum. The CBP officer served a Notice to Appear (NTA) upon the applicant for a hearing before an immigration judge. The applicant was then issued an I-94 card evidencing her parole into the United States until January 7, 2007. On November 22, 2006, the applicant filed the instant Form I-485 with U.S. Citizenship and Immigration Services (USCIS). Service records indicate that the applicant's proceedings before an immigration judge remain pending.

In a July 15, 2008 decision, the director determined that the applicant was not eligible for adjustment of status because she filed her Form I-485 less than one year after her arrival into the United States and she, therefore, did not have at least one year of aggregate physical presence in the United States before applying for benefits under section 1 of the CAA. The director denied the application and certified her decision to the AAO for review. The director informed the applicant that she had 30 days to supplement the record with any evidence that she wished the AAO to consider. The applicant has not submitted any evidence for consideration.

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. 8 C.F.R. § 245.2(a)(2)(ii). The applicant filed her instant I-485 on November 22, 2006, which was 10 months and 14 days after her arrival in the United States. Section 1 of the CAA requires one year of physical presence in the United States before an application may be filed. Accordingly, the application must be denied¹. 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. The applicant has not met her burden. Accordingly, the director's decision is affirmed.

ORDER: The director's decision is affirmed. The application is denied.

¹ The AAO notes that the applicant filed a new Form I-485 on June 2, 2008, which remains pending.