

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

A 2



FILE:

Office: ORLANDO, FLORIDA

Date:

MAY 06 2009

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.

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 Field Office Director (FOD), Orlando, Florida, denied the application to adjust status and 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 Columbia 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 applicant is seeking classification as the spouse of an alien who is described section 1 of the CAA. 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 provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States. [Emphasis added.]

A review of the record reveals the following facts and procedural history: On August 10, 2007, the applicant entered the United States in B-2 status. On January 14, 2008, the applicant married his present spouse. Service records indicate that the applicant's spouse, who is a native and citizen of Cuba, became a lawful permanent resident on July 3, 1997, with a classification as the daughter of a U.S. citizen. On March 6, 2008, the applicant filed the instant Form I-485 with U.S. Citizenship and Immigration Services (USCIS).

In a February 25, 2009 decision, the director determined that the applicant was not eligible for adjustment of status because he filed his Form I-485 less than one year after his arrival into the United States and he, 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 he had 30 days to supplement the record with any evidence that he wished the AAO to consider. The applicant has not submitted any evidence for consideration.

An applicant is ineligible for the benefits of section 1 of the CAA 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 the instant I-485 on March 6, 2008, which was six months and 25 days after his arrival into 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 denied. 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 he is eligible for adjustment of status. The applicant has not met his burden. Accordingly, the director's decision is affirmed.

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