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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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U.S. Citizenship
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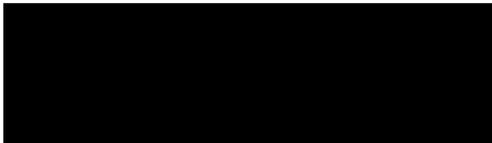
IN RE:

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:



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).

Perry Rhew
Chief, Administrative Appeals Office

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 The district director's decision will be affirmed in part and withdrawn in part.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

The applicant is a native and citizen of the Dominican Republic who filed this application for adjustment of status to that of a lawful permanent resident as the spouse of a native or citizen of Cuba admitted or paroled into the United States after January 1, 1959 who had been physically present in the United States for one year, pursuant to 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 her discretion and under such regulations as she 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.

A review of the record reveals the following facts and procedural history. The applicant was admitted to the United States on April 10, 1992, as a K-1 nonimmigrant fiancé of a United States citizen. The record shows that the applicant married her United States fiancé on June 19, 1992 and was granted conditional residence status on April 26, 1994. A review of United States Citizenship and Immigration Services' (USCIS) records does not reveal that a Form I-751, Petition to Remove Conditions on Residence, was filed. On August 20, 1996 the applicant's conditional residence was terminated. On June 21, 2007, the applicant divorced her United States citizen spouse. The applicant filed a Form I-485, Application to Register Permanent Residence of Adjust Status, on November 8, 2007, checking box (f) as the spouse of a Cuban described in box (e) which references a native or citizen of Cuba admitted or paroled into the United States after January 1, 1959. The director determined that as the applicant entered the United States as a K-1 fiancé, she is barred from adjusting her status other than through the marriage to the United States citizen whom she first married.

The AAO observes that, under section 245(d) of the Act, there is a statutory restriction on the adjustment of K-1 aliens in the context of adjustments under section 245 of the Act. However, as the applicant in the present matter, is seeking adjustment under the CAA and not under section 245 of the Act, the applicant is not subject to the restriction identified by the field office director. Accordingly, this portion of the field office director's decision is withdrawn.

In addition to the facts and procedural history cited above, a review of the record reveals that on August 6, 2007 the applicant married her present spouse, who is a native and citizen of Cuba. The record shows that the applicant's current spouse adjusted his status to that of a lawful permanent resident on October 31, 2000 pursuant to section 202 of the Nicaraguan Adjustment and Central American Relief Act, P.L. 105-100, (NACARA), NC-6 preference.

In the field office director's September 30, 2009 decision, the director determined that the applicant in this matter was not eligible for adjustment of status because she was not the spouse of a native or citizen of Cuba who had been inspected or paroled into the United States. As noted above, the field office 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. On notice of certification, counsel for the applicant claims that the applicant's spouse could not have adjusted his status pursuant to section 202 of NACARA because NACARA did not come into effect until 1997 and the applicant's husband's I-551 lawful permanent resident card indicates that his lawful permanent residence status started in 1993. Counsel claims further that the applicant's spouse was paroled into the United States to pursue an asylum claim before the immigration court in 1993.¹

Section 202 of NACARA, P.L. 105-100, (NACARA) states, in pertinent part:

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.--

(1) IN GENERAL.--The benefits provided by subsection (a) shall apply to any alien who is a national of Nicaragua or Cuba and who has been physically present in the United States for a continuous period, beginning not later than December 1, 1995, and ending not earlier than the date the application for adjustment under such subsection is filed

* * *

(d) ADJUSTMENT OF STATUS FOR SPOUSES AND CHILDREN.--

(1) IN GENERAL.--Notwithstanding section 245(c) of the Immigration and Nationality Act, the status of an alien shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if--

(A) the alien is a national of Nicaragua or Cuba;

(B) the alien is the spouse, child, or unmarried son or daughter, of an alien whose status is adjusted to that of an alien lawfully admitted for permanent residence under subsection (a), except that in the case of such an unmarried son or daughter, the son or daughter shall be required to establish that they have been physically present in the United States for a continuous period,

¹ The AAO has reviewed the applicant's spouse immigration records and finds that the applicant's spouse adjusted his status pursuant to section 202 of NACARA, not section 1 of the CAA. Furthermore, although counsel maintains that the applicant's spouse was paroled into the United States, she offers no evidence of such parole. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Additionally, the applicant's spouse's immigration record does not reveal that he was paroled into the United States at any time.

beginning not later than December 1, 1995, and ending not earlier than the date the application for adjustment under this subsection is filed;

- (C) the alien applies for such adjustment and is physically present in the United States on the date the application is filed;
- (D) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for exclusion specified in paragraphs (4), (5), (6)(A), and (7)(A) of section 212(a) of the Immigration and Nationality Act shall not apply; and
- (E) applies for such adjustment before April 1, 2000.

The applicant is not eligible to adjust her status under section 202 of NACARA because she is not a national of Nicaragua or Cuba. Regarding section 1 of the CAA, it is applicable to the spouse and child of any alien described therein. Therefore, the applicant's spouse must establish that her spouse is a native or citizen of Cuba who was inspected and admitted or paroled into the United States, and 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 the Refugee Act of 1980, Pub. L. No. 96-121, sec. 203(i), 94 Stat. 102, 108 (1980)).

The record does not indicate that the applicant's spouse is an alien described in section 1 of the CAA because he has never been inspected and admitted or paroled into the United States. The applicant's spouse, through his counsel, indicated that he initially entered the United States on or about April 8, 1993, through Mona Island, to the East of Puerto Rico. Mona Island is an uninhabited island except for a research station belonging to the U.S. National Park Service. Although the applicant's spouse contacted personnel at the research station, the personnel were not authorized to inspect and admit the applicant and thus they called the U.S. Coast Guard which picked him up and turned him over to legacy Immigration and Naturalization Service (INS). The applicant was then placed in deportation proceedings and charged with entering the United States without inspection. Despite counsel's claims to the contrary, there is no evidence in the record that the applicant's spouse was inspected and admitted or paroled into the United States. Accordingly, the applicant is not eligible to adjust her status under section 1 of the CAA, as her spouse was not inspected and admitted or paroled into the United States.

The AAO concurs with the director's determination that the applicant was ineligible to adjust her status pursuant to section 1 of the CAA as her spouse was not inspected and admitted or paroled into the United States. 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 she is eligible for adjustment of status. The applicant has not met her burden. Accordingly, the director's decision on this issue is affirmed.

ORDER: The director's decision is affirmed in part and withdrawn in part. The application is denied.