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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  
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Services

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FILE: [REDACTED] Office: NEWARK, NEW JERSEY

Date:

JUL 09 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 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 September 18, 2008, the applicant was paroled into the United States to pursue an adjustment of status application. On September 13, 2009, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, with U.S. Citizenship and Immigration Services (USCIS), which is the subject of this appeal.

In a February 1, 2010 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. On notice of certification, the applicant submitted a letter in which she states that her early filing of the Form I-485 was unintentional and without malice to deceive or commit fraud. The applicant stated that she was not in a position to lose her filing fees, as the loss of the money would put her and her family into economic hardship.

An application for the benefits of section 1 of the CAA is not properly filed unless the applicant was inspected and admitted or paroled into the United States subsequent to January 1, 1959, and 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 Form I-485 on September 13, 2009, which was 11 months and 26 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 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 is affirmed.

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