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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  
and Immigration  
Services

A<sub>2</sub>



FILE:  Office: NEWARK FIELD OFFICE Date: **SEP 09 2010**

IN RE: Applicant: 

APPLICATION: Application for Adjustment of Status to that of Person Admitted for Permanent Residence under Section 1 of the Cuban Refugee Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF APPLICANT:



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 Colombia 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 child of a Cuban citizen who became a lawful permanent resident pursuant to 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 December 12, 2008, the applicant was admitted to the United States as a B-2 nonimmigrant visitor, with authorization to remain until June 11, 2009. On July 14, 2009, the applicant's mother married a United States lawful permanent resident who had adjusted status under section 1 of the CAA. Based on that marriage, on November 19, 2009, the applicant filed the instant Form I-485 with U.S. Citizenship and Immigration Services (USCIS) under section 1 of the CAA.

In a May 21, 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.

Counsel for the applicant submits a letter and asserts that the spouse or child of a Cuban native or citizen is only required to reside with the Cuban native or citizen and is not required to have been physically present in the United States for at least one year prior to filing for adjustment of status. Counsel notes that *Matter of Bellido*, 12 I&N Dec. 369 (Reg. Comm. 1967), cited by the field office director, is not applicable to the matter at hand.

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 19, 2009, which was only 11 months and 23 days after her arrival in the United States. Contrary to counsel's assertion, section 1 of the CAA requires that the spouse or child of a qualifying Cuban applicant meet all the eligibility criteria, including one year of physical

presence in the United States, before an application may be filed. Accordingly, the application must be denied.

Beyond the decision of the director and pursuant to *Matter of Bellido* the dependent must also establish that she resides with her stepfather. The record in this matter does not include evidence that the applicant resides with the qualifying Cuban lawful permanent resident. For this additional reason, the application must be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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.