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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

A2



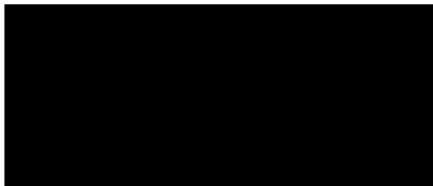
DATE: Office: NEW ORLEANS FIELD OFFICE FILE: 

JUN 28 2011

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:

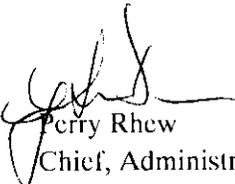


INSTRUCTIONS:

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 \$630. 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 Acting Field Office Director, New Orleans, Louisiana, denied the application to adjust status and affirmed the denial on a subsequently filed motion to reopen and reconsider the matter. The field office director certified his decision to the Administrative Appeals Office (AAO) for review. The field office director's decision is affirmed. The application will remain 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 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.

Section 212(a)(6)(C) of the Act in pertinent part states:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Pertinent Facts and Procedural History

According to the applicant's statement, he applied for admission to the United States four times in March 2008 at the United States-Mexico border. Each time he was denied admission. On or about April 1, 2008, the applicant again applied for admission to the United States and this time used his brother's identification card and was allowed to enter the United States. The applicant was paroled into the United States on April 1, 2008 under a false name pending a hearing under section 240 of the Act. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on October 16, 2009, using his real name.

In his initial denial decision, dated April 22, 2010, the director noted that after the applicant's entry into the United States, he continued to claim to be a different person when interviewed by the Customs and Border Protection Officer and was paroled into the United States using his brother's name. The director determined that section 212(a) of the Act makes any alien found to have misrepresented a material fact in order to procure any benefit under the Act inadmissible to the United States, and therefore ineligible for adjustment of status to that of a permanent resident under section 1 of the CAA.

On the motion to reopen and reconsider, the field office director affirmed his previous decision. The field office director noted that the applicant had filed a Form I-602, Application by Refugee for Waiver of Grounds of Excludability, but determined that the applicant was not a refugee. The director also found that the applicant was ineligible for a waiver of inadmissibility under section 212(i) of the Act.

Analysis and Conclusion

The field office director in this matter determined that the applicant was inadmissible under section 212(a)(6)(C)(i) because he misrepresented his identity when attempting to enter the United States. The applicant thus procured his parole into the United States by misrepresenting a material fact. As the director determined, this misrepresentation was material as the applicant was refused entry on several different occasions when using his real name. Only when he used his brother's Cuban identification document was he allowed to enter the United States. This is a material misrepresentation; but for the misrepresentation, the applicant would not have been allowed into the United States.

The applicant has not demonstrated that he is eligible for a waiver of the material misrepresentation. The Form I-602 may only be filed by an applicant who is a refugee or asylee who was admitted under section 207 or 208 of the Act. The applicant was not admitted under either of those sections; thus, the Form I-602 is inapplicable in this matter. An alien seeking to adjust status under the CAA must file a Form I-601, Application for Waiver of Grounds of Inadmissibility. Section 212(i) of the Act provides for the Secretary of Homeland Security to exercise discretion in waiving the application of section 212(a)(6)(C)(i) of the Act for those aliens who have a qualifying relative and establish extreme hardship to the qualifying relative if the waiver is not granted. In this matter, the applicant does not have a qualifying relative and thus he is not eligible for a waiver.

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. Here, that burden has not been met.

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