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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

[redacted]

DATE: SEP 15 2011 Office: NEWARK NEW JERSEY FILE: [redacted]

IN RE: Applicant: [redacted]

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:

[redacted]

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 application was denied by the District Director, Newark, New Jersey, who certified his decision to the Administrative Appeals Office (AAO) for review. The director's decision will be 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 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 November 21, 2009, the applicant was paroled into the United States in Miami, Florida. On November 12, 2010, the applicant filed the instant Form I-485 with U.S. Citizenship and Immigration Services (USCIS). In a July 25, 2011 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 physical presence in the United States before applying for benefits under section 1 of the CAA. The director denied the application and certified his 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 application for the benefits of section 1 of the Act of November 2, 1966 is not properly filed unless the applicant was inspected and admitted or paroled into the United States subsequent to January 1, 1959. 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 his instant I-485 on November 12, 2010, which was less than one year after his 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 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.