



U.S. Citizenship
and Immigration
Services



A2

DATE: **OCT 10 2012** Office: NEWARK, NJ FILE:

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: 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 \$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 Field Office Director, Newark, New Jersey, who certified the decision to the Administrative Appeals Office (AAO) for review. The District Director's decision will be affirmed.

The applicant is native and citizen of Peru 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, as the dependent (spouse) of a Cuban citizen, and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 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.

The Field Office Director found the applicant inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the *Immigration and Nationality Act (the Act)*, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States. The Field Office Director also found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decisions of the Field Office Director*, dated March 1, 2012. The record does not reflect an appeal of the director's denial of the Form I-601.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
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 - (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
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- (v) Waiver.-The Attorney General [now the Secretary of Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the

case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present application, the record indicates that the applicant entered the United States on May 11, 2009, and was admitted as a B-1 Visitor for Business and she was authorized to remain in the United States for a period not to exceed August 10, 2009. The applicant remained in the United States beyond August 10, 2009, without authorization. On August 15, 2011, the applicant filed a Form I-485, Application to Adjust Status. While her Form I-485 application was pending, the applicant applied for advance parole and departed the United States on August 4, 2011.

The applicant accrued unlawful presence from August 11, 2009, the date after her authorized stay expired, until April 15, 2011, the date the applicant filed her Form I-485 application. The applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act was triggered when she departed the United States on August 4, 2011. The applicant sought admission into the United States within 10 years of her August 4, 2011 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. As noted above, the Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the waiver application on May 1, 2012. The applicant's Form I-601 has been denied and there has been no appeal of that denial decision. Therefore, the applicant remains inadmissible to the United States under section 212(a)(9)(B)(II).

As the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year, she is ineligible for adjustment of status to permanent residence, pursuant to section 1 of the CAA of November 2, 1966. The decision of the Field Office Director to deny the application will be affirmed.

ORDER: The Field Office Director's decision is affirmed.