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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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File:

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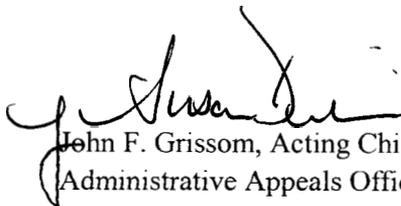
IN RE: Applicant:

Petition: Application to Register Permanent Residence or Adjust Status (Form I-485) Pursuant to
Section 209 of the Immigration and Nationality Act, 8 U.S.C. § 1159

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, New Orleans, Louisiana, and is now before the Administrative Appeals Office (AAO) on notice of certification. The director's decision will be withdrawn and the matter remanded for continued processing of the applicant's Form I-485 application to adjust status.

The applicant is a native and citizen of Cuba who intended to file this application for adjustment of status to that of a lawful permanent resident under section 209 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1159, as an alien who has been admitted to the United States under section 207 of the INA. The applicant, however, indicated on the Form I-485 that she was filing for adjustment of status pursuant to section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966.

Section 209(a) of the INA states, in part:

(1) Any alien who has been admitted to the United States under section 207-

(A) whose admission has not been terminated by the Secretary of Homeland Security or the Attorney General pursuant to such regulations as the Secretary of Homeland Security or the Attorney General may prescribe,

(B) who has been physically present in the United States for at least one year, and

(C) who has not acquired permanent resident status, shall, at the end of such year period, return or be returned to the custody of the Department of Homeland Security for inspection and examination for admission to the United States as an immigrant in accordance with the provisions of sections 235, 240 and 241.

A review of the record reveals the following facts and procedural history: On June 20, 2002, an officer from U.S. Citizenship and Immigration Services (USCIS) approved the applicant's Form I-590, Registration for Classification as a Refugee. The applicant subsequently entered the United States on December 3, 2003, at which time she was issued an I-94, Arrival and Departure Card, which indicated: "Admitted as a refugee pursuant to Section 207 of the Act for an indefinite period of time. . . ." On October 18, 2005, the applicant filed a Form I-485 application to adjust her status to that of a lawful permanent resident. At Part 2 of the application, the applicant checked box e, which is the box for seeking adjustment of status pursuant to section 1 of the CAA. The applicant appeared for an interview before a USCIS officer in the New Orleans Field Office on November 3, 2008. At that time, she was issued a letter to submit a Form I-693, Report of Medical Examination and Vaccination Record, by December 3, 2008. The applicant submitted the requested report. In the decision, the director noted that the applicant was seeking to adjust her status under section 1 of the CAA, not section 209 of the INA.

In a December 13, 2008 decision, the director determined that the applicant was not eligible for adjustment of status because she had submitted only vaccination records, not a completed Form I-693. The director noted further that the medical records the applicant submitted were prepared by a physician other than a USCIS designated civil surgeon. The director denied the application and

certified his 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 has submitted a brief on certification in which he states that the applicant made a clerical error when checking box e on the Form I-485. Counsel points out that the applicant's husband and two children, who filed their applications at the same time as the applicant and who also checked box e on their applications, have already received their lawful permanent resident status pursuant to section 209 of the INA, not section 1 of the CAA. Counsel submits copies of the family members' applications and relevant pages from the USCIS *Adjudicators' Field Manual (AFM)*.

The AAO disagrees with the director's decision to deny the applicant's Form I-485. Although the applicant checked box e on the Form I-485, it is apparent from a review of her record that she entered the United States as a refugee pursuant to section 207 of the INA and, therefore, she would have been seeking to adjust her status under section 209 of the INA, not section 1 of the CAA. Furthermore, since there is no specific box on the Form I-485 that relates to seeking adjustment as an individual who was granted refugee status, the applicant's choice in checking box e, which relates to Cuban nationals, was a reasonable error. The applicant's error should not have caused the field office to adjudicate her application under section 1 of the CAA, particularly in light of the fact that the applicant's family members, who also made the same clerical mistakes on their I-485 applications, were granted lawful permanent resident status by another USCIS office pursuant to section 209 of the INA.

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. Here, the applicant has met her burden of establishing that her Form I-485 should have been processed as an applicant seeking lawful permanent resident status pursuant to section 209 of the INA, not section 1 of the CAA. Accordingly, the AAO withdraws the director's decision and remands the matter for continued processing of the applicant's Form I-485 pursuant to Section 209 of the INA.

ORDER: The director's decision is withdrawn and the matter remanded for continued processing of the applicant's I-485 adjustment of status application pursuant to section 209 of the INA.