



U.S. Department of Justice
Immigration and Naturalization Service

A 2

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

FILE: [Redacted]

Office: Miami

Date:

OCT 18 2000

IN RE: Applicant:

[Redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT:

[Redacted]

Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

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 of November 2, 1966. This Act provides for the adjustment of 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, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director determined that the applicant was not eligible for adjustment of status because he failed to establish that he was inspected and admitted or paroled into the United States. The district director, therefore, denied the application.

In response to the notice of certification, counsel requests further communication regarding the status of the applicant's case.

The application for adjustment of status, filed on August 20, 1996, shows that the applicant entered the United States without inspection on November 29, 1986, near McAllen, Texas. The applicant states in this application that she was inspected by an officer of the Service in Miami, Florida, on December 1, 1986.

To establish his claim that he was inspected, the applicant furnished a copy of the I-94 portion of the Record of Deportable Alien (Form I-213) issued on December 1, 1986, upon filing of an application for asylum, Form I-589. This form shows that the applicant claimed to have entered the United States without inspection near McAllen, Texas, on November 29, 1986.

The record reflects that the applicant appeared at the Immigration Service at Miami, Florida, two days later, on December 1, 1986. The applicant, however, did not arrive at a designated port of entry as provided in section 275 of the Immigration and Nationality Act, 8 U.S.C. 1325, but rather, she entered the United States by crossing the Mexican border into McAllen, Texas, and no evidence was furnished to establish that he was inspected at the McAllen port of entry. It was held in Matter of O-, 1 I&N Dec. 617 (BIA 1943), that when an alien enters the United States within the limits of a city designated as a port of entry, but at a point where immigration officers are not located, the applicable charge is entry without inspection. See also Matter of Estrada-Betancourt, 12 I&N Dec. 191 (BIA 1967); Matter of Pierre, 14 I&N Dec. 467 (BIA 1973).

The applicant bears the burden of proving that he in fact presented himself for inspection as an element of establishing eligibility for adjustment of status. Matter of Arequillin, 17 I&N Dec. 308 (BIA 1980). The applicant has failed to meet that burden.

It is, therefore, concluded that the applicant was not inspected and admitted or paroled into the United States. The applicant filed an application for waiver of grounds of inadmissibility (Form I-601) on August 20, 1996, based on his entry to the United States without inspection. The adjudication of the waiver application falls within the jurisdiction of the director. However, there is no waiver available to an alien found statutorily ineligible for adjustment of status on the basis that he was not inspected and admitted or paroled into the United States. Consequently, the applicant is not eligible for the benefit sought. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.