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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

FILE: [redacted] Office: Miami Date: SEP 25 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, 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 Ecuador 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, 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, 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 district director determined that the applicant was not eligible for adjustment of status as the spouse of a native or citizen of Cuba pursuant to section 1 of the Act of November 2, 1966, because her spouse was not admitted into the United States under section 1 of the Act. The district director, therefore, denied the application.

In response to the notice of certification, the applicant requests reconsideration because his wife is a United States citizen.

The record reflects that on July 9, 1990, the status of the applicant's spouse was adjusted to that of a refugee (RE-6). On February 18, 1998, at Hialeah, Florida, the applicant married his spouse, a native and citizen of Cuba. The record further reflects that the applicant's wife was naturalized a United States citizen on July 6, 1999.

The statute clearly states that the provisions of section 1 of the Cuban Adjustment Act shall be applicable to the spouse and child of any alien described in this subsection. In order that the applicant may be eligible for the benefits of section 1 of the Act of November 2, 1966, he or she must be the spouse of a native or citizen of Cuba who has been inspected and admitted or paroled into the United States, has made an application for such adjustment under section 1 of the Act, is eligible to receive an immigrant

visa, and is admissible to the United States for permanent residence. See Matter of Milian, 13 I&N Dec. 480 (Acting Reg. Comm. 1970). See also Section 2 of the Act of November 2, 1966; Matter of Benguria Y Rodriguez, 12 I&N Dec. 143 (Reg. Comm. 1967). In this case, the applicant's spouse is not an alien described in section 1 of the Act. Therefore, the benefits of section 1 are not available to the applicant.

Accordingly, the applicant is ineligible for adjustment of status to permanent resident pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

This decision is without prejudice to the filing of a Relative Immigrant Visa Petition (Form I-130) by the applicant's spouse on behalf of the applicant.

ORDER: The district director's decision is affirmed.