U.S. Department of Justice

Immigration and Naturalization Service

C

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

[redacted]

FILE: [redacted] Office: Texas Service Center Date: APR 26 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 ...
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 Director, Texas Service Center, who certified his decision to the Associate Commissioner, Examinations, for review. The director's decision will be withdrawn and the application will be approved.

The applicant is a native of Cuba and citizen of Spain 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 director determined that the applicant was not eligible for adjustment of status because he was admitted to the United States under the visa waiver pilot program pursuant to section 217 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1187. The director, therefore, denied the application.

On notice of certification, the applicant requests reconsideration because he cannot return to his native country of Cuba at this time due to the communist and tyrannical government which is in power on the island to this date.

The record reflects that the applicant was born in Cuba on September 7, 1952, to a Cuban national mother and a Spanish national father. It is not clear from the record when the applicant departed from Cuba to reside in Spain. The applicant entered the United States on December 5, 1997 at [redacted] where he was inspected and admitted to the United States under the visa waiver pilot program pursuant to section 217 of the Act.

Referring to 8 C.F.R. 245.1(b), the director determined that the applicant was not eligible for adjustment of status to permanent residence because aliens admitted to the United States under the visa waiver pilot program pursuant to section 217 of the Act are ineligible from adjustment of status under section 245 of the Act. 8 C.F.R. 245.1(b)(8) states, in pertinent part:

> Any alien admitted as a Visa Waiver Pilot Program visitor under the provisions of section 217 of the Act and part 217 of this chapter other than an immediate relative as defined in section 201(b) of the Act....is ineligible to apply for adjustment of status.

An alien admitted to the United States under section 217 of the Act may be admitted as a visitor for pleasure for a period not to

exceed 90 days and must maintain his or her status as a visitor. An alien admitted under this section is not eligible for extension of his or her authorized period of temporary stay in the United States, is not eligible for adjustment of his or her status to that of an alien lawfully admitted for permanent residence pursuant to section 245 of the Act, other than an immediate relative as defined in section 201(b) of the Act, 8 U.S.C. 1151(b), and is not eligible for change of nonimmigrant status pursuant to section 248 of the Act, 8 U.S.C. 1258.

It is clear from Service regulations and from the statute that an alien admitted to the United States under the provisions of section 217 of the Act is not eligible for adjustment of status to that of a lawful permanent residence under section 245 of the Act. The applicant in this case, however, is applying for adjustment of his status to permanent residence under section 1 of the Cuban Adjustment Act and not under section 245 of the Act. There is no prohibition against an alien who has been admitted to the United States under the visa waiver pilot program to adjust status under Section 1 of the Cuban Adjustment Act. To be eligible for adjustment of status under Section 1, an alien must show only that he is a native or citizen of Cuba, he was inspected and admitted or paroled into the United States, he has been physically present in the United States for at least one year, and that he is admissible to the United States for permanent residence. See also Matter of Masson, 12 I&N Dec. 699 (BIA 1968).

It is concluded that the applicant has established he has met all the requirements set forth in section 1 of the Cuban Adjustment Act of November 2, 1966, that he is eligible for adjustment of status under this Act, and warrants a favorable exercise of discretion. There are no known grounds of inadmissibility. Accordingly, the director's decision will be withdrawn, and the application will be approved.

ORDER: The director's decision is withdrawn. The application is approved.