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: Texas Service Center Date: FEB 18 2000

IN RE: Applicant: [redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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: Self-represented

Public Copy

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

For 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 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 [redacted] 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 had not been physically present in the United States for at least one year prior to the

filing of the application. The director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

In response to the notice of certification, the applicant states that the reason for filing his application early was based on an effort to allow the postal service and the delivery service to have enough processing time so that the Service could have all the documents on time. The applicant submits additional evidence.

8 C.F.R. 245.2(a)(2)(ii) provides, in part:

> An application for the benefits of section 1 of the Act of November 2, 1966 is not properly filed unless the applicant was inspected and admitted or paroled into the United States subsequent to January 1, 1959. An applicant is ineligible for the benefits of the Act of November 2, 1966 unless he or she has been physically present in the United States for one year.

The record reflects that the applicant was paroled into the United States on November 10, 1997. On September 22, 1998, approximately ten months after his parole, the applicant filed the application in this matter for adjustment of status under section 1 of the Cuban Adjustment Act.

While the applicant submits copies of his pay check stubs dated from January 31, 1998 through December 15, 1998 to establish that he has been physically present in the United States for more than one year, the record reflects that the applicant filed his adjustment application on September 22, 1998.

The applicant has not demonstrated that he has been physically present in the United States for one year at the time of filing the adjustment application as required. He is, therefore, ineligible for the benefit sought. The director's decision will be affirmed. Nonetheless, this decision is without prejudice to the filing of a new application for adjustment of status along with supporting documentation and the appropriate fee now that the applicant has been physically present in the United States for at least one year.

ORDER: The director's decision is affirmed.