



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



Public Copy

FILE:

Office: Texas Service Center

Date:

IN RE: Applicant:



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

preventing and
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 affirmed.

The applicant is a native and citizen of [REDACTED] who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the [REDACTED] 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 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's mother claims she was informed by the Service office in Miami that due to backlog of cases in the Service Center, she and her daughter (the applicant) may file their applications for adjustment of status before the one-year anniversary. She requests reconsideration of her daughter's application because although she and her daughter both applied for adjustment with the Texas Service Center at the same time, her application (the mother's) has since been approved.

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 June 13, 1997. On May 19, 1998, less than one year after her parole, the applicant filed the application in this matter for adjustment of status under section 1 of the Cuban Adjustment Act. While the applicant's mother claims that she was informed by the Service that her application may be filed before the one-year physical presence is fulfilled, no evidence is furnished to support her claim.

Furthermore, if the physical presence of the applicant's mother in the United States was in fact less than one year prior to the

filing of the application for adjustment, it appears the adjustment was approved in error. In Sussex Engineering, Ltd. v. Montgomery, 825 F.2d 1084 (6th Cir. 1987), the Court of Appeals held that it is absurd to suggest that the Service must treat acknowledged errors as binding precedent. The Service is not required to approve applications or petitions where eligibility has not been demonstrated. See Matter of M-, 4 I&N Dec. 532 (A.G. 1952; BIA 1952).

In this case, the applicant has not demonstrated that she has been physically present in the United States for one year at the time of filing the adjustment application as required. She 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.