



Ad

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: MAR - 7 2001

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]

Identification Card deleted to prevent identity compromise of permanent person.

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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

PUBLIC COPY

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 Brazil 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 (Cuban Adjustment Act). Section 1 of 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 Cuban Adjustment Act, because her spouse did not adjust his status under this Act. The district director, therefore, denied the application.

In response to the notice of certification, counsel claims that a spouse of a native and citizen of Cuba who otherwise meets the requirements of the Cuban Adjustment Act can adjust her status under such act, regardless of how her Cuban spouse received his lawful permanent residence. Counsel declares that although the applicant's spouse was not adjusted under section 1 of the Cuban Adjustment Act, he is an alien described in section 1 as a native or citizen of Cuba, who has been inspected and admitted or paroled into the United States, and who has been physically present in the United States for at least one year. Citing Matter of Rosas, Int. Dec. 3384 (BIA 1999), counsel asserts that there is no requirement in section 1 that the inspection and admission be as that of a nonimmigrant, and that the applicant's spouse has been inspected and admitted, most recently through adjustment of status as a lawful permanent resident.

The record reflects that on February 1, 1996, the status of the applicant's spouse, [REDACTED], was adjusted to that of a lawful

permanent resident as an AS6 (asylee). On November 21, 1997 at Miami, Florida, the applicant married Mr. Gacel, a native and citizen of Cuba. Service records indicate that Mr. Gacel originally entered the United States without inspection, which would render him ineligible to adjust status through the Cuban Adjustment Act.

Counsel's assertion is not persuasive. In Matter of Quijada-Coto, 13 I&N Dec. 740 (BIA 1971), the Board held that adjustment of status to that of permanent resident pursuant to the provisions of the Cuban Adjustment Act, is not available to the spouse of an alien described in section 1 of the Act, where the alien himself has been denied adjustment of status under the Act. While there is no record to indicate that the applicant's spouse in the present case was denied adjustment of status under section 1, the Board's finding is analogous to this case. The provisions of section 1 require that the Cuban alien, to be eligible for adjustment under this Act, must have been inspected and admitted or paroled into the United States. There is no evidence in this case that the applicant's spouse met this requirement. Rather, he applied for asylum status, and his status was adjusted on February 1, 1996 to that of a permanent resident under section 208 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1158. The provisions of section 208 of the Act do not require that an alien be inspected and admitted or paroled into the United States. Because the record does not contain evidence that the applicant's spouse was inspected and admitted or paroled into the United States, he would not be eligible to adjust his status under section 1; therefore, the applicant is not eligible to adjust her status under section 1.

Counsel relies on a decision relating to removal proceedings, Matter of Rosas, supra, to assert that the applicant's spouse has been inspected and admitted for purposes of section 1 of the Cuban Adjustment Act. In this decision, the Board examined whether the deportation charge contained at section 237(a)(2)(A)(iii) of the Act applies to an alien who had entered the United States without inspection and subsequently adjusted status under section 245A of the Act. Section 237(a)(2)(A)(iii) provides that "[a]ny alien who is convicted of an aggravated felony at any time after admission is deportable." (Emphasis added.) The Board found that the phrase "after admission" includes an alien who has been "lawfully admitted for permanent residence" pursuant to a grant of adjustment of status. Counsel maintains that because the applicant's spouse adjusted status, he has been "inspected and admitted" to the United States and is therefore an alien described in section 1 of the Cuban Adjustment Act.

Matter of Rosas is distinguishable from the case at hand. Although adjustment of status may equal "admission" for the purpose of section 237(a)(2)(A)(iii) removal proceedings, it does not constitute "inspected and admitted or paroled" for purpose of

section 1 of the Cuban Adjustment Act. In Matter of Rosas, the Board explained that admission to permanent resident status may occur through two routes: (1) inspection and authorization at the border, or (2) adjustment of status while in the United States. Matter of Rosas at 5. Although the Board concluded that an alien's adjustment of status should be considered an admission for purpose of section 237 of the Act, the Board did not determine that a grant of adjustment of status is the equivalent of "inspection and authorization at the border" or a port of entry. Section 1 of the Cuban Adjustment Act specifically requires that an alien be "inspected and admitted or paroled into the United States." As concluded in Matter of Benguria Y Rodriguez, "[s]ection 1 obviously refers to those Cuban refugees who were inspected and admitted as nonimmigrants or paroled into the United States. If this were not correct, then the provision in this section permitting adjustment of status to that of an alien lawfully admitted for permanent residence would be without purpose." 12 I&N Dec. 143, 144 (Reg. Comm. 1967) (emphasis in original). Matter of Benguria Y Rodriguez also notes that section 2 of the Cuban Adjustment Act speaks of "any alien described in section 1" and refers to "the date the alien originally arrived in the United States as a nonimmigrant or as a parolee." Id.

We are bound to rely on the plain language of the Cuban Adjustment Act to afford it the specific meaning that Congress intended. See K-Mart Corp. v. Cartier, Inc., 486 U.S. 281, 291 (1988); see also Matter of Alvarado-Alvino, Interim Decision 3391 (BIA 1999). Unlike section 237 of the Act, sections 1 and 2 of the Cuban Adjustment Act do not refer to simple "admission," but specifically require that the alien be "inspected and admitted or paroled into the United States" as "a nonimmigrant or parolee." The adjustment of status of the applicant's spouse may not be equated to inspection and admission as a nonimmigrant or as a parolee, for purposes of the Cuban Adjustment Act.¹

¹ It should also be noted that at the time that the Cuban Adjustment Act of 1966 was enacted, Congress had rendered ineligible for adjustment of status aliens from many countries of the Western Hemisphere, including Cuba as an "adjacent island." See Act of October 3, 1965, Pub. L. No. 89-236, Sec. 13(c), 79 Stat. 911, 919 (1965). Congress did not abolish the bar against granting adjustment of status to Cubans and other aliens from the Western Hemisphere until 1976, when section 245 of the Act was amended. Immigration and Nationality Act Amendments of 1976, Pub. L. No. 94-571, Sec. 6, 90 Stat. 2703, 2704-5 (1976). Counsel's assertion that Congress intended the term "inspected and admitted or paroled" to include adjustment of status is dubious, since there was no means for a Cuban to adjust status at the time, other than section 1 of the Act of 1966.

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 Cuban Adjustment Act, 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, and who has been physically present in the United States for at least one year. Matter of Milian, 13 I&N Dec. 480, 482 (Acting Reg. Comm. 1970). 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 Cuban Adjustment 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.