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

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PUBLIC COPY

[redacted]

FILE [redacted] Office: Miami Date: ~~MAY~~ June - 3 2002

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: Self-represented

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

Helen E. Crawford for

Robert P. Wiemann, 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 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 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 district director determined that the applicant failed to submit additional evidence as had been requested. The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

The district director determined that although the applicant furnished evidence of his medical insurance, he failed to submit an application for waiver of grounds of inadmissibility (Form I-601) as had been requested. The district director further determined that based on the applicant's failure to submit evidence as had been requested, the application will be denied for lack of prosecution, and that his decision will not be certified to the Administrative Appeals Office (AAO) pursuant to Service Operating Instruction 245.5(b). However, on August 29, 2001, the district director certified his decision to the AAO and accorded the applicant 30 days in which to submit a brief or other written statement for consideration. The applicant has provided no statement or additional evidence on notice of certification.

A review of the record of proceeding reflects that the applicant's medical examination report reflects that the applicant tested positive for HIV infection, and that the results of the serological examination for HIV were confirmed by Western blot. The district director denied the application after determining that the applicant failed to submit a waiver application.

Section 212(a)(1)(A)(i) of the Act states:

> Any alien who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with

> the etiologic agent for acquired immune deficiency syndrome,

is inadmissible to the United States. HIV has been determined by the Public Health Service to be a communicable disease of public health significance. 42 C.F.R. 34.2(b)(4). Aliens infected with HIV, however, upon meeting certain conditions, may have such inadmissibility waived.

Pursuant to section 212(g) of the Act, 8 U.S.C. 1182(g). The Attorney General may waive inadmissibility in the case of any alien who--

> (A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa, or
>
> (B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa.

An applicant who meets this statutory requirement must also demonstrate that the following three conditions will be met if a waiver is granted:

> (1) The danger to the public health of the United States created by the applicant's admission to the United States is minimal; and
>
> (2) The possibility of the spread of the disease created by the applicant's admission to the United States is minimal; and
>
> (3) There would be no cost incurred by any level of government agency in the United States without prior consent of that agency.

The applicant has not established eligibility for a waiver under section 212(g) of the Act for this ground of inadmissibility in that (a) he has not filed a formal application for waiver of grounds of inadmissibility (Form I-601), and (b) the applicant has not established that he has the statutorily required family relationship for consideration of a waiver. Absent the establishment of this statutory requirement, there is no need to discuss whether the applicant meets the three conditions for the granting of a waiver. The record does not establish the applicant's eligibility to apply for a waiver under any other provision of the Act.

The applicant was offered an opportunity to submit evidence in opposition to the district director's finding of inadmissibility. No additional evidence has been entered into the record of proceeding.

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.

ORDER: The district director's decision is affirmed.