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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Miami (Tampa) Date: AUG 18 2003

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)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The case will be remanded to the acting district director for further action.

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 statute 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 acting district director determined that the applicant was inadmissible to the United States, pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), and that the application for waiver of grounds of inadmissibility (Form I-601) had been denied. The acting 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.

Section 212(a)(6)(C) of the Act states in part:

> Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or entry into the United States or other benefit provided under this Act is inadmissible.

The acting district director maintained that the applicant sought admission to the United States on December 24, 1996, by presenting a passport that had been altered, and that he was found inadmissible to the United States, pursuant to section 212(a)(6)(C), by an immigration judge on July 18, 1997. He further maintained that the application for waiver of grounds of inadmissibility was denied (on October 10, 2002). He, therefore, denied the application for adjustment of status.

The record of proceeding contains counsel's response to the acting district director's notice of intent to deny the Form I-601 application for waiver, dated August 30, 2002. The record reflects that counsel's response was timely received by the Bureau on September 30, 2002. The application for waiver was denied by the acting district director on October 10, 2002. Counsel's response to the notice of intent, however, was not addressed by the acting district director in his decision to deny.

Accordingly, the case will be remanded in order that the acting district director may fully adjudicate the waiver application and/or reopen on a Service motion. The acting district director shall enter a

new decision regarding the application for adjustment of status which, if adverse to the applicant, is to be certified to the AAO for review.

ORDER: The acting district director's decision is withdrawn. The case is remanded for further action and entry of a new decision consistent with the above discussion.