A2

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 Date: AUG 22 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)

IN BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

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 for review. The acting district director's decision will be affirmed.

The applicant is a native and citizen of Colombia who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966. 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 acting district director determined that the applicant did not qualify for adjustment of status as the spouse of a native or citizen of Cuba, pursuant to section 1 of the Act of November 2, 1966, because her spouse was not paroled or admitted into the United States as a nonimmigrant. The acting district director, therefore, denied the application.

In response to the notice of certification, counsel asserts that the Acting District Director misinterprets the spirit and the letter of law by interpreting section 1 of the CAA as excluding people such as the spouse of the applicant ([redacted]). Mr. [redacted] although a refugee, was admitted to the United States. Counsel contends that the narrow interpretation that "admitted" is meant to include only non-immigrants is not clear from the legislative history; in fact, this runs contrary to the intentions of the drafters of this law. He states that the drafters of the law wanted to give Cubans, fleeing a terrible and dictatorial

regime, the opportunity to seek safe haven in the United States and ultimately adjust their status in the United States.

The record reflects that on November 30, 1995, the applicant's spouse (Mr. [redacted]) was conditionally admitted to the United States as a refugee under section 207(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1157(a). His status was subsequently adjusted to that of a lawful permanent resident (as an RE6) as of the date of his arrival in the United States. On April 22, 2001 at Davie, Florida, the applicant married Mr. [redacted] a native and citizen of Cuba. Based on that marriage, on March 22, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

The statute clearly states that the provisions of section 1 of the CAA shall be applicable to the spouse and child of any alien described in this subsection. In order for the applicant to be eligible for the benefits of section 1 of the CAA, 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. *See Matter of Milian*, 13 I&N Dec. 480 (Acting Reg. Comm. 1970) (applying the physical presence requirement as amended by Refugee Act of 1980, Pub. L. No. 96-212, sec. 203(i), 94 Stat. 102, 108 (1980)).

Despite counsel's assertion on appeal, the Regional Commissioner determined, in *Matter of Benguria Y Rodriguez*, 12 I&N Dec. 143 (Reg. Comm. 1967) (in reviewing the status of an alien applying for benefits under section 2 of the Act of November 2, 1966), that an applicant who had been admitted as an immigrant in possession of a valid immigrant visa had never "originally" arrived in the United States as a nonimmigrant or parolee subsequent to January 1, 1959. In reaching this conclusion, the Regional Commissioner stated that "[s]ection 1 obviously refers to those Cuban refugees who were inspected and admitted as nonimmigrants or paroled into the United States." *Matter of Benguria Y Rodriguez, supra, reaffirmed by Matter of Baez Ayala*, 13 I&N Dec. 79 (Reg. Comm. 1968).

Section 101(a)(150 of the Act states in pertinent part: "The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens . . ." It continues to list all the nonimmigrant classifications. Refugees are not

included in the list, therefore, they are considered to be immigrants.

In the present case, the spouse of the applicant was admitted as a refugee under section 207(a) of the Act, and not as a parolee or nonimmigrant. Therefore, as the applicant's spouse was not inspected and admitted as a nonimmigrant or paroled into the United States, the benefits of section 1 are not available to the applicant.

Accordingly, the applicant is ineligible for adjustment of status to permanent residence, pursuant to section 1 of the Act of November 2, 1966. The decision of the acting 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 acting district director's decision is affirmed.