PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

A2

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

FILE: [redacted] Office: Miami Date: AUG 26 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 for review. The acting district director's decision will be affirmed.

The applicant is a native and citizen of Peru 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 found the applicant inadmissible to the United States because she falls within the purview of section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), and that her application for waiver of grounds of inadmissibility had been denied. The acting district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

In response to the notice of certification, counsel asserts that they have new evidence to present in this matter, and requested that the case be sent back to the Miami district office so that this evidence may be presented and a determination be made thereafter.

Pursuant to section 212(a)(9)(B)(i)(II) of the Act, any alien (other than an alien lawfully admitted for permanent residence) who—

> has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record reflects that on March 24, 2001, at Homestead, Florida, the applicant married [redacted] a native and citizen of Cuba who adjusted his status under section 1 of the CAA. Based on that marriage, on May 23, 2001, the applicant filed for adjustment of status as the spouse of a Cuban, pursuant to section 1 of the CAA.

The acting district director denied the application for adjustment of status after determining that the applicant was inadmissible to the United States, pursuant to section 212(a)(9)(B)(i)(II) of the Act, because she had been unlawfully present in the United States since July 18, 1997. He further noted that on December 20, 2001, the applicant filed an application for a travel document (Form

I-131); she was advised in writing and orally that if she left the United States, even with permission from the Service, she may be inadmissible under section 212(a)(9)(B)(i) of the Act upon her return to the United States; she, in fact, signed a document indicating that she understood the consequences of traveling abroad if she was out of status; she departed from the United States with an approved I-131 and returned to the United States on January 23, 2002. The acting district director further determined that the application for waiver of grounds of inadmissibility (Form I-601), filed by the applicant on June 11, 2002, was denied on November 8, 2002, because the applicant failed to demonstrate how her deportation (removal) would result in extreme hardship to her spouse. Although she had 30 days in which to file an appeal, the applicant failed to do so.

Accordingly, the applicant is inadmissible to the United States, pursuant to section 212(a)(9)(B)(i))(II) of the Act. Counsel asserts that he has new evidence to present in this matter and requests that the case be sent back to the Miami district office so that this evidence may be presented and a determination be made. He further asserts that his office has been in contact the Miami office and the adjudication officer and they agreed that the case should be returned to them for a proper final determination based upon all of the new evidence the applicant and her husband have to submit. No additional evidence, however, was furnished by counsel in his response to the notice of certification. Nor does the record contain a request from the Miami district office that the case be remanded to that office.

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.

ORDER: The acting district director's decision is affirmed.