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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 I Street N.W.

CIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536

AA

[REDACTED]

SEP 22 2003
Date:

FILE: [REDACTED] Office: Texas Service Center

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

INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, who certified her decision to the Administrative Appeals Office for review. The director's decision will be withdrawn, and the application will be approved.

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, in pertinent 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 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). The 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 record reflects that the applicant was admitted to the United States on May 12, 2001, with a B-2 nonimmigrant visa issued in Havana, Cuba, on November 30, 2000. She was authorized to remain in the United States until November 11, 2001. On May 24, 2002, the applicant filed this application for adjustment of status under section 1 of the Cuban Adjustment Act.

The director maintained that based on the nonmaterial fact that the applicant did not seek to extend her nonimmigrant status, and on the material fact that she had applied to adjust her status to that of an alien lawfully admitted for permanent residence, it can be concluded that the applicant had no intention of returning to her residence in a foreign country and that she had misrepresented her purpose in coming to the United States. The director, therefore,

determined that the applicant was inadmissible to the United States pursuant to section 212(a)(6)(C) of the Act.

The record in this case does not support the finding that the applicant willfully misrepresented a material fact or that there was a preconceived intent to immigrate to the United States when she applied for a B-2 nonimmigrant visa with the U.S. Embassy. The fact that the applicant did not maintain lawful status in the United States and subsequently applied to adjust her status to permanent residence is insufficient to establish that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C) of the Act.

Citing section 4 of the Cuban Adjustment Act of 1966, the director stated that "nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration, nationality, or naturalization." The director added that by the self-proclamation contained in the Cuban Adjustment Act, the Immigration and Nationality Act holds the ultimate authority on all grounds of immigration matters.

There is no prohibition against an alien who has not maintained lawful status adjusting under section 1 of the Cuban Adjustment Act. To be eligible for adjustment of status under this section, an alien must only show that she is a native or citizen of Cuba, that she was inspected and admitted or paroled into the United States, that she has been physically present in the United States for at least one year, and that she is admissible to the United States for permanent residence.

It is concluded that the applicant has established that she has met all the requirements set forth in section 1 of the Cuban Adjustment Act of November 2, 1966, that she is eligible for adjustment of status under this Act, and that she warrants a favorable exercise of discretion. Accordingly, the director's decision will be withdrawn, and the application will be approved.

ORDER: The director's decision is withdrawn. The application is approved.