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

**AAO**

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



SEP 22 2003

FILE:  Office: Texas Service Center

Date:

IN RE: Applicant: 

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, 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 The director's decision will be withdrawn, and the application will be approved.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 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 director noted that the applicant entered the United States on November 2, 2001, at Miami International Airport where the Service found him in violation of section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. 1182(a)(7)(A)(i)(I). The director stated that the applicant's "most recent I-94 indicates that on November 3, 2001 the Service granted you a parole pursuant to section 212(d)(5) of the Act." The director determined that nothing in the record reflected that the applicant was granted parole for urgent humanitarian reasons or significant public benefit; therefore, his parole is not regarded as an admission to the United States. She further determined that given the nature of section 212 of the Act, the purpose of the applicant's parole requires the resolution of a section 240 hearing or a hearing to determine inadmissibility. Therefore, the director determined that the applicant had not yet established admissibility for permanent residence as required under section 1 of the Act of 1966.

In response to the notice of certification, the applicant requests that his case be carefully reviewed. He states that he did not enter the United States on November 3, 2001. Rather, he entered on November 2, 2000, and on November 3, 2000, the Service granted him parole, pursuant to section 212(d)(5) of the Act, to expire on November 2, 2001.

Section 212(a)(7) of the Act states in part:

(A)(i) Except as otherwise specifically provided in this Act, any immigrant at the time of application for admission --

(I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and

a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 211(a), is inadmissible.

The record reflects that on November 2, 2000, at Miami International Airport in Florida, the applicant presented himself for inspection. He stated that he was a Cuban national and not in possession of any documents to establish his identity. In a sworn statement before an officer of the Service, the applicant stated that he paid \$3000 to a man who made arrangements for his departure from Cuba to the United States. He boarded a flight from Cuba to Argentina, and when he boarded the flight to Miami (from Argentina) the man took and kept his Cuban passport.

The applicant was detained for a hearing before an immigration judge after it was determined that he was inadmissible to the United States, pursuant to section 212(a)(7)(A)(i)(I) of the Act, as an alien who at the time of application for admission was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality. On November 3, 2000, the applicant was paroled into the United States, pursuant to section 212(d)(5) of the Act, until November 2, 2001, pending removal proceedings. There is no indication in the record that the I-862 Notice to Appear was ever served on the immigration court.

The provisions of section 1 of the Act require that applicants for adjustment of status must have been inspected and admitted or paroled into the United States, must be eligible to receive an immigrant visa, and must be admissible to the United States for permanent residence.

Contrary to the director's finding, the applicant, in this case, was inspected upon his arrival in the United States on November 2, 2000. Although he was not immediately admitted or paroled following inspection, he was detained by the Service, and the following day, on November 3, 2000, he was paroled into the United States, pursuant to section 212(d)(5) of the Act, until November 2, 2001, pending removal proceedings. As the applicant was paroled into the United States as required by section 1 of the CAA he is, therefore, not ineligible for adjustment of status under this ground. Therefore, this finding of the director will be withdrawn.

Pursuant to section 212(a)(7)(A)(i)(I) of the Act, any alien who at the time of application for admission was not in possession of an entry document is inadmissible to the United States. Section 1 of the Cuban Adjustment Act was modified by the Refugee Act of 1980. The Act states that an alien who has been paroled into the United

States pursuant to section 212(d)(5) of the Act, who seeks adjustment of status under section 1 of the Act, is no longer subject to the provisions of the paragraphs (14), (15), (20), (21), and (32) of section 212(a) of the Act. These sections are now sections 212(a)(5)(A), 212(a)(4), 212(a)(7), 212(a)(7)(A), and 212(a)(5)(B) of the Act, respectively. The applicant is, therefore, not inadmissible under section 212(a)(7)(A) of the Act.

As the ground of ineligibility present in this case has now been overcome, the application will be approved.

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