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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

FILE: [redacted] Office: Miami Date: SEP 3 0 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)

PUBLIC COPY

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 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 Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office for review. The acting district director's decision will be withdrawn, and the application will be approved.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 (CAA) of November 2, 1966. This Act 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 not eligible for adjustment of status because he was not inspected and admitted or paroled into the United States. The acting district director, therefore, denied the application.

In response to the notice of certification, counsel contends that the applicant entered the United States without inspection, he later was granted asylum but never applied for adjustment of status based on the grant of asylum, and he is married to a U.S. citizen. Counsel requests reconsideration of the application under section 1 of the CAA, based on the new regulations relating to Cubans who entered the United States without inspection.

The record reflects that on June 10, 1995, the applicant was apprehended by the Border Patrol 18 miles north of Laredo, Texas. The applicant stated that he was a native and citizen of Cuba and that he last entered the United States from Mexico by wading the Rio Grande River, approximately one mile up-river from the Brownsville port of entry, thus avoiding inspection by a Service officer. The applicant was, therefore, taken into Service custody after it was determined that he was subject to deportation (removal), pursuant to section 241(a)(1)((B) of the Act, 8 U.S.C. § 1231(a)(1)(B). Due to lack of holding space, the applicant was released from Service custody pending a final determination of his removal/admissibility. He was issued Forms I-830 and I-220A. The applicant subsequently filed an application for asylum (Form I-589), and on August 13, 1996, the applicant was granted asylum by an immigration judge. There is no evidence in the record that the applicant filed for adjustment of status based on the grant of asylum.

When an alien enters the United States within the limits of a city designated as a port of entry, but at a point where immigration officers are not located, the applicable charge is entry without inspection. *See Matter of O-*, 1 I&N Dec. 617 (BIA 1943); *See also Matter of Estrada-Betancourt*, 12 I&N Dec. 191 (BIA 1967); *Matter of Pierre*, 14 I&N Dec. 467 (BIA 1973).

On April 19, 1999, the Commissioner issued a memorandum setting forth the Service's policy concerning the effect of an alien's having arrived in the United States at a place other than a designated port of entry on the alien's eligibility for adjustment of status under the Cuban Adjustment Act of 1966 (CAA), 8 U.S.C. § 1255. In her memorandum, the Commissioner states that this policy does not relieve the applicant of the obligation to meet all other eligibility requirements. In particular, CAA adjustment is available only to applicants who have been "inspected and admitted or paroled into the United States." An alien who is present without inspection, therefore, would not be eligible for CAA adjustment unless the alien first surrendered himself or herself into Service custody and the Service released the alien from custody pending a final determination of his or her admissibility.

The Commissioner concluded that if the Service releases from custody an alien who is an applicant for admission because the alien is present in the United States without having been admitted, the alien has been paroled. This conclusion applies even if the Service officer who authorized the release thought there was a legal distinction between paroling an applicant for admission and releasing an applicant for admission under section 236. When the Service releases from custody an alien who is an applicant for admission because he or she is present without inspection, the Form I-94 should bear that standard annotation that shows that the alien has been paroled under section 212(d)(5)(A).

In a footnote, the Commissioner added that it may be the case that the Service has released an alien who is an applicant for admission because he or she is present without inspection, without providing the alien with a parole Form I-94. In this case, the Service will issue a parole Form I-94 upon the alien's asking for one, and satisfying the Service that the alien is the alien who was released.

The applicant, in this case, was taken into Service custody and was subsequently released from custody. Based on the Commissioner's April 19, 1999 memorandum, the applicant meets the requirements of the Commissioner's policy, and he was, therefore, paroled upon his release from Service custody.

Accordingly, the applicant is eligible for adjustment of status to permanent residence, pursuant to section 1 of the Act of November 2, 1966, and warrants a favorable exercise of discretion. The acting district director's decision will be withdrawn, and the application will be approved.

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