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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

A2

[redacted]

FILE: [redacted] Office: TAMPA, FLORIDA Date: JAN 13 2005

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The District Director's decision will be affirmed.

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. The CAA 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, (now the Secretary of Homeland Security, (Secretary)), 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 District Director determined that the applicant had not been physically present in the United States for one year prior to the filing of the application. The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See District Director's Decision* dated March 30, 2004.

8 C.F.R. § 245.2(a)(2)(ii) provides, in part:

> An application for the benefits of section 1 of the Act of November 2, 1966 is not properly filed unless the applicant was inspected and admitted or paroled into the United States subsequent to January 1, 1959. An applicant is ineligible for the benefits of the Act of November 2, 1966 unless he or she has been physically present in the United States for one year.

The record reflects that the applicant was paroled into the United States on January 8, 2001. On December 27, 2001, less than one year after being paroled into the United States, the applicant filed the application in this matter for adjustment of status under section 1 of the Cuban Adjustment Act.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director 's findings. The applicant submits a letter in which he does not dispute that fact that he filed the application for adjustment of status less than one year after being present in the United States. The applicant asks why his case continued to be processed, why, in May 4, 2002, he was sent an appointment for fingerprinting and why it took the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) more than two years to deny his application. Furthermore the applicant states that it was an error to let so much time go by without communicating with him and therefore his application should be approved.

The record of proceedings in this case is for the denial of the Form I-485 and the AAO will not address the backlog of the district office.

As noted above the record of proceedings reveals that the applicant was paroled into the United States on January 7, 2001, and filed his application for adjustment of status on December 27, 2001. Consequently, the applicant was not physically present in the United States for one year at the time of filing the adjustment application as required. He is, therefore, ineligible for the benefit sought. The District Director's decision will be affirmed.

This decision, however, is without prejudice to the filing of a new application for adjustment of status, along with supporting documentation and the appropriate fee, now that the applicant has been physically present in the United States for at least one year.

ORDER: The District Director's decision is affirmed.