Adjustment of Status under the Cuban Refugee Adjustment Act of 1966

Under the Cuban Refugee Adjustment Act of 1966, a native or citizen of Cuba, who has been inspected, admitted, or paroled into the United States after January 1, 1959, and has been present in the United States for more than one year, may apply for permanent residency.[1] Pub. L. No. 89-732, 80 Stat. 1161, as amended. The Attorney General may, in his discretion, adjust the alien's status to that of a lawful permanent resident if the alien is eligible to receive an immigrant visa and is admissible to the United States. Pub. L. No. 89-732, 80 Stat. 1161, as amended. Any spouse or child who resides[2] with the alien, including after-acquired spouses or children, is eligible to adjust under the provisions of the Cuban Refugee Adjustment Act. Pub. L. No. 89-732, 80 Stat. 1161, as amended. There are no restrictions as to the number of times an individual may acquire lawful permanent resident status under this law, nor is there a cut-off date for applicants. See Pub. L. No. 89-732, 80 Stat. 1161, as amended.

Under 8 C.F.R. §§ 245.2(a)(1) and 1245.2(a)(l)(ii) (2009), an Immigration Judge has no jurisdiction to adjudicate an application filed by an arriving alien seeking adjustment of status under the Cuban Refugee Adjustment Act, with the exception of cases involving an alien who has been placed in removal proceedings after returning to the U.S. pursuant to a grant of advance parole to pursue a previously filed application. Matter of Silitonga, 25 I&N Dec. 89 (BIA 2009); Matter of Martinez-Montalvo, 24 I&N Dec. 778 (BIA 2009) (recognizing Matter of Artigas, 23 I&N Dec. 99 (BIA 2001) as superseded by regulations, 8 C.F.R. §§ 245.2(a)(1) and 1245.2(a)(l)). However, "the lack of jurisdiction over [the adjustment of status under the Cuban Refugee Adjustment] does not negate [the Immigration Judge's] jurisdiction over…removal proceedings under 240 of the Act" against an arriving alien. Matter of E-R-M- & L-R-M-, 25 I&N Dec. 520 (BIA 2011).

An alien whose application under the Cuban Refugee Adjustment Act is approved effectively acquires lawful permanent resident status thirty months prior to the date of his/her application, or on the date of his/her last entry into the United States, whichever occurs later. Pub. L. No. 89-732, 80 Stat. 1161, as amended; see also Matter of Rivera-Rioseco, 19 I&N Dec. 833 (BIA 1988) (applying the "roll back" provision of the Cuban Refugee Adjustment Act (i.e., thirty months prior to application) to determine that the respondent had met the seven year requirement under INA § 212(c)). An alien who has adjusted status to that of a lawful permanent resident pursuant to the Cuban Refugee Adjustment Act, has been admitted to the U.S. and is subject to charges of removability under INA § 237(a). Matter of Espinosa Guillot, 25 I&N Dec. 653 (BIA 2011). In determining whether an alien whose status was adjusted pursuant to section 1 of the Cuban Refugee Adjustment Act is removable as an alien who has been convicted of a crime involving moral turpitude committed within 5 years after the alien's "date of admission," the admission date is calculated according to the rollback provision of section 1, rather than the date adjustment of status was granted. Matter of Carrillo, 25 I&N Dec. 99 (BIA 2009).

---

[1] Cubans who were paroled into the United States under INA § 212(d)(5), 8 U.S.C. § 1182(d)(5) (1976), between April 1, 1980, and May 18, 1980, are considered to have been admitted as refugees pursuant to the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102. See Matter of L-T-P-, 26 I&N Dec. 862 (2016).

[2] A battered spouse or child need not reside with the qualifying alien in order to be eligible for the Cuban Refugee Adjustment Act. In this regard, the provisions of INA § 204(a)(1)(J) are applicable. Pub. L. No. 89-732, 80 Stat. 1161, as amended.