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U.S. Citizenship
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Services

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FILE:

Office: PHOENIX, ARIZONA

Date:

MAR 20 2006

IN RE:

APPLICATION: Application to Adjust Status under § 245 of the Immigration and Nationality Act

ON BEHALF OF APPLICANT:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting District Director, Phoenix, Arizona denied the application for adjustment of status (Form I-485) and certified his decision to the Administrative Appeals Office (AAO). The acting district director's decision will be affirmed. The application will be denied.

The applicant claims to be a native and citizen of Nicaragua, born on April 25, 1972; however, a review of Citizenship and Immigration Services records reveals three other dates of birth and a different nationality for this applicant. She submitted a Form I-485 Application to Adjust Status on June 24, 2004 pursuant to § 245 of the Immigration and Nationality Act (the Act), U.S.C. § 1255. She is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen husband.

The acting district director denied the application in the exercise of discretion upon finding that the negative factors presented outweighed the positive factors. The record reflects that the applicant has provided three different birthdates (April 25, 1972, 1965, and 1962) to Citizenship and Immigration Services (CIS), and a fourth birthdate (April 25, 1968) and different nationality (Venezuelan) to Glendale, Arizona police. Regarding the latter, FBI records indicate that the applicant was arrested on August 4, 1990 in Glendale, Arizona, and was charged with aggravated assault. It appears that the court dismissed the case. The acting district director noted that the applicant's birth certificate had been altered, and her passport was missing the biographical data page and photograph. The acting district director found that CIS was unable to determine the applicant's true identity and her date and place of birth. The only positive factor noted was the fact that the applicant's husband is a U.S. citizen.

The acting district director certified his decision to the AAO for review on December 30, 2005. Counsel submitted a brief, affidavits executed by the applicant and her husband, copies of the applicant's alleged U.S. visa, airline tickets, Form I-94, blank passport pages, drivers licenses, and her university diploma. The AAO has reviewed the entire record and concurs with the acting district director's exercise of discretion in the matter at hand.

Counsel asserts that the applicant was born in 1972, and that she came to the United States when she was nine years old. He contends that the applicant had already finished high school in Nicaragua, and that her guardians in the United States changed her birth year on her birth certificate from 1972 to 1962 (then later changed it back again) in order to enroll the applicant in high school. The AAO notes that the record does not include any affidavits from said guardians or any documentation from the high school she allegedly attended in Los Angeles as a nine-year-old girl. The AAO also finds it implausible that the high school enrolled a child of nine years of age, accepting the pretense that she was actually nineteen, pursuant to her guardians' alteration of her birth certificate.

Counsel indicates that the applicant's asylum application reflected her birth year as 1962 because her birth certificate had been altered to show that year, as explained above. On her Form I-589 in answer to question #21, the applicant indicated that she had been studying at the university in her country. Thus, not only had she graduated from high school, but had already attended university by the age of nine. On the Form G-325A signed on October 14, 1983, the applicant wrote that she had been working as a part time cashier from March to June 1983, at which time she would have been ten years old, according to her current explanations. In

addition, if the applicant was born in 1972 as she now claims, the immigration examiner who interviewed the applicant in connection with her asylum claim on November 23, 1983 would have noticed that the applicant was not twenty one, as indicated by the date of birth on her asylum application, but was an eleven year old child.

The applicant wrote in her affidavit that a childhood friend ripped out her passport picture as a souvenir; therefore, her passport no longer contains her picture. The copy submitted of the last page of the applicant's passport is blank and does not clarify the applicant's identity. The original passport has no biographical data page. Without her picture or biographical data, the passport and U.S. visa cannot be verified as belonging to the applicant. Her birth date was altered on her Form I-94 and birth certificate. The drivers licenses submitted are much more recent and do not serve to explain the material discrepancies regarding the applicant's true birth date.

In her affidavit, the applicant stated that she was arrested on assault charges when she was about seventeen years old, and that she did not remember speaking directly with any officer, as she was standing in the background. She also stated that she never told an officer on that occasion that she was from Venezuela or was born in 1968, as her criminal record indicates. The AAO notes, however, that CIS identified the applicant with her arrest record based on a fingerprint match; in other words, she could not have remained in the background, since an officer took her fingerprints and understood her correct name and birth month and day. The information in CIS record also does not indicate that she was a juvenile at the time of that arrest.

The applicant's husband stated in his affidavit that the applicant has always used the birth year of 1972 to his knowledge. The record, however, contains no affidavits or any reliable, independent documentation from persons or sources contemporaneous with her birth, her studies in Nicaragua, her entry into the United States, or her studies (except for her 2003 college diploma) or other activities in this country. The explanations provided regarding the inconsistencies in the applicant's birth dates and identity are implausible and unsubstantiated by any independent documentation. The AAO notes that it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant has failed to reconcile the material discrepancies noted in the denial. The AAO therefore affirms the acting district director's denial of the Application for Adjustment of Status.

ORDER: The director's December 30, 2005 decision is affirmed. The application is denied.