



U.S. Department of Justice
Immigration and Naturalization Service

A2

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536



PUBLIC COPY

FEB 21 2001

FILE:

Office: Miami

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

identification data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant, claiming to be a native and citizen of Cuba, 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 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 district director determined that the applicant was inadmissible to the United States because she falls within the purview of section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C)(i). The district director, therefore, denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(6)(C)(i) of the Act states, in part:

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or entry into the United States or other benefit provided under this Act is inadmissible.

The record shows that the applicant was paroled into the United States on October 15, 1970. While the applicant's Form I-94 reflects that the applicant is a citizen of Cuba, the record of proceeding is devoid of documentary evidence establishing that she is in fact a native or citizen of Cuba. On April 12, 1990, the applicant filed an application for adjustment of status. No supporting documents were furnished with the application.

On August 22, 1996, the applicant again filed an application for adjustment of status. Submitted with the application is a self-statement by the applicant stating that she was born in Havana, Cuba, on October 4, 1965. This self-statement was witnessed by [REDACTED] claiming that she is a United States citizen who was born in Cuba, and that she is aware that the applicant was born on October 4, 1965. Ms. [REDACTED] however, neither indicated where the applicant was born nor indicated how she is aware that the applicant was born on the date claimed, or whether she was an eye

witness to the birth of the applicant. Thus, the applicant's self-statement and Ms. [REDACTED]'s statement are not credible evidence that the applicant was in fact born in Cuba as claimed.

Based on the Service request of March 17, 1998 to submit additional evidence, including an original birth certificate, the applicant furnished a birth certificate indicating that she was born in Cuba on October 4, 1965. Because the birth certificate appeared to be fraudulent, it was sent to the Forensic Document Laboratory for assessment. Upon review of the certificate, a Forensic Document Analyst confirmed on May 5, 1998, that the birth certificate was indeed a counterfeit.

The applicant was, therefore, requested to appear for an interview on September 18, 1998, and to bring with her, among other documents, her birth certificate. The appointment notice was mailed to the applicant's last known address. The notice was returned to the Service with a notation, "no such number."

Based on the counterfeit birth certificate, the director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act and denied the application.

Matter of S- and B-C-, 9 I&N Dec. 436 (BIA 1960, AG 1961), is instructive and states that a misrepresentation under section 212(a)(19) of the Act (now section 212(a)(6)(C) of the Act) is material if either (a) the alien is excludable on the true facts, or (b) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he or she be excluded. The same test for determining materiality is applicable to misrepresentations involving identity.

To be eligible for the benefits of Section 1 of the Cuban Adjustment Act, the alien must prove that he or she is a native or citizen of Cuba. Without an authentic birth certificate to establish that the applicant is in fact a Cuban national, such submission of a counterfeit Cuban birth certificate may render the applicant inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

The finding of the director that the applicant appears to be inadmissible meets the materiality test as set forth in Matter of S- and B-C-. The record reflects that the applicant previously filed an application for adjustment of status under section 1 of the Cuban Adjustment Act on April 12, 1990. Neither a Cuban birth certificate nor other supporting documents were furnished although she was requested to submit these documents. She refiled an adjustment application accompanied by a self-statement that it has been impossible to obtain her birth certificate from Cuba. She subsequently submitted a fraudulent Cuban birth certificate.

While the applicant may indeed be a Cuban national, she has not submitted any credible evidence to establish this claim. Further, while there are not sufficient grounds to render the applicant inadmissible on the true facts, the misrepresentation, even if willful, did tend to shut off a line of inquiry. Once the misrepresentation became known, the Service conducted an investigation, and the applicant was requested to appear for interview at the Service office. The notice was sent to the applicant at her last known address. The notice, however, was returned by the Postal Service as undeliverable. There is no evidence that the applicant filed a timely change of address with the Service.

In view of the above, it appears that there is a misrepresentation of a material fact according to the test set forth in Matter of S- and B-C-, supra. Therefore, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that she is eligible for adjustment of status. She has failed to meet that burden. The decision of the district director to deny the application will, therefore, be affirmed.

ORDER: The district director's decision is affirmed.