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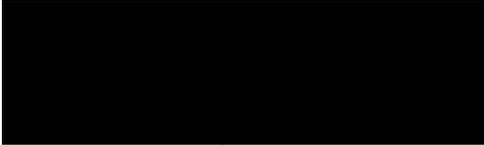
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U.S. Department of Justice

Immigration and Naturalization Service

**Identifying data deleted to
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invasion of personal privacy**

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



FILE:



Office: Miami

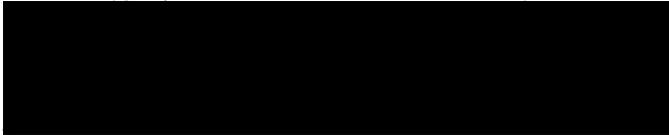
Date: **DEC 16 2002**

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:



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 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 that 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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The case will be remanded to the acting district director for further action.

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 of November 2, 1966. This statute 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 inadmissible to the United States because she falls within the purview of section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C). The acting district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

In response to the notice of certification, counsel asserts that the applicant did not misrepresent a material fact, and that any alleged misrepresentation was not willful. He further asserts that the applicant is eligible to apply for a waiver of inadmissibility because she has lived in a state of marital union for nearly 14 years to a Cuban who is a lawful permanent resident. Counsel submits the applicant's marriage certificate and an application for waiver of grounds of inadmissibility (Form I-601).

Section 212(a)(6)(C) 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.

Section 212(a)(7) of the Act states in part:

(A)(i) Except as otherwise specifically provided in this Act, any immigrant at the time of application for admission --

(I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and

a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 211(a), is inadmissible.

The record reflects that on October 11, 1996, at Miami International Airport in Florida, the applicant was encountered at planeside by members of the Terrorist, Drugs and Fraud (TDF) team. The applicant presented a Spanish passport belonging to another person into which her photograph had been substituted.

Contrary to counsel's assertion that the applicant did not misrepresent a material fact and that any alleged misrepresentation was not willful, Service records indicate that on October 11, 1996 the applicant gave a sworn statement to an officer of the Service, admitting that she purchased a passport for \$1500 from two acquaintances who were visiting Colombia. She stated that because she was traveling with false documents she did not carry other documents with her and, therefore, had no proof that she was a Cuban citizen. The applicant was detained for a hearing before an immigration judge after it was determined that she was inadmissible to the United States under the provisions of sections 212(a)(6)(C) and 212(a)(7) of the Act.

As determined by the acting district director, it is concluded that the applicant is inadmissible to the United States pursuant to sections 212(a)(6)(C) of the Act. The applicant, however, has filed an application for waiver of grounds of inadmissibility for attempting to enter the United States with a fraudulent passport. Accordingly, the case will be remanded in order that the acting district director may adjudicate the waiver application and enter a new decision as to the application for adjustment of status which, if adverse to the applicant, is to be certified to the Associate Commissioner, Examinations, for review.

ORDER: The acting district director's decision is withdrawn. The case is remanded for further action and entry of a new decision consistent with the above discussion.