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U.S. Department of Justice
Immigration and Naturalization Service

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

FILE

Office: Texas Service Center

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 Director, Texas Service Center, who certified his decision to the Associate Commissioner, Examinations, for review. The director's decision will be withdrawn, and the application will be approved.

The applicant is a native of Cuba and citizen of Venezuela 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. This Act states, in pertinent 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, 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 director determined that the applicant was not eligible for adjustment of status, pursuant to section 1 of the Cuban Adjustment Act, because she entered the United States with a Venezuelan passport claiming Venezuelan nationality. She is, therefore, considered a Venezuelan citizen for all immigration purposes as determined in Matter of Ognibene, 18 I&N Dec. 425 (BIA 1983).

In response to the notice of certification, counsel asserts that the applicant was born in Cuba; therefore, she is a Cuban national. She further asserts that section 1 states that the status of any alien who is a native or citizen of Cuba may be adjusted status. The pertinent statutory language states that an alien can establish eligibility under the CAA in a variety of ways. The alien can be both a native and a citizen of Cuban, a native of Cuba and not a citizen of Cuba, or a citizen of Cuba and not a native of Cuba. Consul contends that the Service's conclusion is neither supported by the pertinent statutory language nor by Matter of Ognibene, supra.

The record reflects that the applicant was born in Cuba on August 23, 1934, to a Cuban mother and a Cuban father. It is not shown in the record when the applicant departed from Cuba to reside in Venezuela. The applicant entered the United States with a Venezuelan passport on December 29, 1999, as a B-2 visitor for pleasure.

The applicant in this case is applying for adjustment of his status to permanent residence under section 1 of the Cuban Adjustment Act. To be eligible for adjustment of status under section 1 of the CAA,

an alien must show only that she is a native or citizen of Cuba, she was inspected and admitted or paroled into the United States, she has been physically present in the United States for at least one year, and that she is admissible to the United States for permanent residence. See Matter of Masson, 12 I&N Dec. 699 (BIA 1968).

The applicant, in this case, was born in Cuba. She is, therefore, a native of Cuba, she was inspected and admitted into the United States subsequent to January 1, 1959, and she has been physically present in the United States for at least one year. She is, therefore, not precluded from adjustment of status under section 1 of the Cuban Adjustment Act of November 2, 1966. The director did not raise any other basis for denial, nor are there known grounds of inadmissibility.

Accordingly, the director's decision will be withdrawn, and the application will be approved.

ORDER: The director's decision is withdrawn. The application is approved.

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