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U.S. Department of Justice

Immigration and Naturalization Service

Identification data related to
[redacted]
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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted]

Office: Miami

Date: 04 MAR 2002

IN RE: Applicant: [redacted]

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:
[redacted]

Public Law

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

Helen E Crawford for
Robert P. Wiemann, 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 The district director's decision will be withdrawn, and the application will be approved.

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 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 found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(6)(D) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(D). The 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 although the applicant was a stowaway from Colombia to the Dominican Republic, the voyage from the Dominican Republic to the United States began under a distinct set of circumstances. The officers of the vessel not only consented to the presence of the Cuban passengers, but made the necessary arrangements to have them brought to the ship, and there was absolutely no concealment involved; on the contrary, the applicant and other Cubans were given passage and a place to sleep, as well as chores to perform aboard the ship.

Section 212(a) of the Act, 8 U.S.C. 1182(a), states, in part, that aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(6) Illegal entrants and immigration violators --

(D) Stowaways. Any alien who is a stowaway is inadmissible.

Section 101(a) of the Act, 8 U.S.C. 1101(a) defines the term "stowaway:"

(49) The term "stowaway" means any alien who obtains transportation without the consent of the owner, charterer, master or person in command of any vessel or aircraft through concealment aboard such vessel or aircraft. A passenger who boards with a valid ticket is not to be considered a stowaway.

Documents contained in the record of proceeding, including the applicant's sworn statement dated July 19, 1996, and a telegram from the master of the vessel, M/V Christian I, dated July 16, 1996, reflect that the applicant departed from Cuba to Colombia in October 1994, and remained in Colombia for approximately two years. In June 1996, the applicant and two other Cubans boarded the M/V Christian I after paying \$600 to a worker on the docks in Colombia. They boarded the vessel without any documents and without the master of the ship having any knowledge or consenting to their presence. Shortly after the ship departed to the Dominican Republic, they were discovered on board. Upon arrival in the Dominican Republic on June 18, 1996, the applicant and his two Cuban companions were turned over to the custody of the Dominican authorities. Meanwhile, the M/V Christian I departed from the Dominican Republic to its next destination.

Upon the return of M/V Christian I to the Dominican Republic on July 15, 1996, according to the master of the vessel, the Dominican immigration authorities boarded the vessel and refused to allow the vessel to sail and they "forcibly asked us to take back 3 stowaways that we had landed ashore with the permission of the immigration authorities...on 18th June..." The master further states that the vessel's departure "was delayed inspite of hectic effort as immigration had forced the Port Authority to cancel pilot, tug n [sic] mooring people, till such time V/L accept officially the three Cubans stowaways." The Cubans were allowed to board the vessel on July 15, 1996, and the M/V Christian I arrived at Miami, Florida, on July 19, 1996. The applicant was taken into Service custody and was subsequently paroled into the United States pending his request for political asylum.

The applicant and his two Cuban companions obtained transportation from the Dominican Republic to the United States with the consent of the master of the vessel and without concealment aboard the vessel, despite the fact that it appears the master's acceptance to board the Cubans was under duress. The record in this case, therefore, does not meet the definition of the term "stowaway" pursuant to section 101(a) of the Act.

It is concluded that the applicant is not inadmissible to the United States pursuant to section 212(a)(6)(D) of the Act. He is,



therefore, eligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966, and warrants a favorable exercise of discretion. Accordingly, the decision of the district director will be withdrawn, and the application will be approved.

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