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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: Miami

Date: NOV - 6 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: Self-represented

PUBLIC COPY

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 district director's decision will be affirmed.

The applicant is a native 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 of November 2, 1966. This Act provides, 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 provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

The acting district director determined that the applicant was not eligible for adjustment of status under section 1 of the Cuban Adjustment Act because he failed to establish that he is a citizen of Cuba. The acting district director, therefore, denied the application.

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

It is noted for the record that the applicant had previously applied for adjustment of status as the minor child of a Cuban father with whom he was residing in the United States. Because the applicant's father passed away on February 28, 2001, the district director denied the application on September 26, 2001. The Associate Commissioner affirmed the district director's decision on March 11, 2002. The applicant reapplied for adjustment of status claiming to be a citizen of Cuba because his father was a Cuban citizen.

The record reflects that the applicant was born in Venezuela on May 16, 1990, to a Venezuelan mother and a Cuban father. The applicant entered the United States as a visitor on September 28, 1999, using his Venezuelan passport issued in Venezuela on January 4, 1992. On January 14, 2002, the applicant filed for adjustment of status

under section 1 of the Cuban Adjustment Act, claiming to be a native or citizen of Cuba.

The record further reflects that the applicant obtained a Cuban birth certificate, issued in Cuba, on November 22, 2001. The district director determined that this birth certificate is not acceptable evidence of Cuban citizenship as it does not state that the applicant is a citizen of Cuba. He further determined that the applicant had not provided any official document from the appropriate Cuban authorities, such as a passport or certificate of citizenship, recognizing him as a Cuban citizen.

Article 29 of the Constitution of the Republic of Cuba reads, in part:

Those considered Cuban citizens by birth are:

(c) those born outside of Cuba of Cuban father or mother, provided that they comply with the formalities of the law.

Article 32 of the Constitution of the Republic of Cuba reads, in part:

Those who lose their Cuban citizenship:

(ch) are those naturalized Cubans who reside in the country of their birth, unless they express and present themselves every three (3) years before the corresponding consular authority, their wish to preserve their Cuban citizenship.

(d) are those naturalized citizens who would accept a dual citizenship.

Guidance received from the Library of Congress in Washington, D.C., in a similar case regarding the citizenship of an individual born in Venezuela to Cuban parents found that

Under Venezuelan law (Constitucion de la Republica de Venezuela), those born on Venezuelan territory are Venezuelans by birth. One of the grounds for losing Venezuelan citizenship by birth is the option for or voluntary adoption of another citizenship.

Therefore, according to the National Constitution, Venezuelan citizenship by birth may be lost only if the Venezuelan native voluntarily adopts another nationality. Venezuela does not allow dual citizenship.

....The mere fact of obtaining a Cuban birth certificate does not amount to an express act of relinquishing the Venezuelan citizenship, since the person in this instance has been living as a Venezuelan citizen holding and using only Venezuelan documents.

Therefore, even though under Cuban law he might be considered to be a Cuban citizen by application of the principle of "jus sanguinis"--that is because his parents were native Cubans--under Venezuelan law he is still a Venezuelan citizen since Venezuela does not recognize dual citizenship and according to the information provided, the individual in question has not relinquished his Venezuelan citizenship. It may then be concluded that in this case the individual is still Venezuelan unless he can prove that he has expressly given up his right thereto.

The record, as presently constituted, is devoid of evidence to prove that the applicant has expressly given up his right to Venezuelan citizenship. Nor is there evidence that the applicant is a naturalized Cuban citizen who falls under Article 32 of the Constitution of the Republic of Cuba. The applicant holds a Venezuelan passport in which it is stated that he is a Venezuelan citizen. He was admitted into the United States with his Venezuelan passport as a visitor on September 28, 1999. Accordingly, as stated above, the applicant is a citizen of Venezuela and does not meet the requirements of section 1 of the Act.

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. He has failed to meet that burden.

Therefore, it is concluded that the applicant is ineligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966. The decision of the acting district director to deny the application will be affirmed.

ORDER: The acting district director's decision is affirmed.