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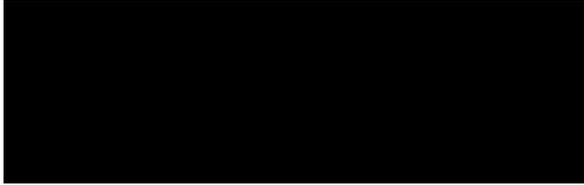
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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**



FILE:  Office: MIAMI, FLORIDA Date: **APR 13 2004**

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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Handwritten signature: Robert P. Wiemann

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 Administrative Appeals Office (AAO) for review. The AAO affirmed the decision of the acting district director to deny the application. The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the AAO will be withdrawn, and the application will be approved.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. The CAA provides, in 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, (now the secretary of Homeland Security, (Secretary)), 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 acting district director denied the application after determining that the applicant was not eligible for adjustment of status under section 1 of the CAA because she failed to establish that she is a citizen of Cuba.

Upon review of the record of proceeding available on certification, the AAO determined that although the applicant and her mother presented themselves to the Cuban Consulate in Caracas, Venezuela, and the applicant obtained a Cuban birth certificate, Venezuela did not recognize dual citizenship, and the record was devoid of evidence establishing that the applicant had expressly given up her right to Venezuelan citizenship.

On December 27, 2002, the AAO affirmed the acting district director's finding that the applicant was a citizen of Venezuela and, therefore, did not meet the requirements of section 1 of the CAA.

On motion, counsel asserts that the case on which the AAO based its decision is no longer good Venezuelan law as the Venezuelan Constitution has since been amended regarding dual nationality. He submits a copy of the Venezuelan Constitution, amended in 1999, which states, in part:

Article 34: The Venezuelan nationality is not lost upon electing or acquiring another nationality.

The applicant, in this case, claimed that she is a Cuban citizen, pursuant to Article 29 of the Cuban Constitution that 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.

In the present case one of the applicant's parents is Cuban, and she has complied with the formalities stipulated by Cuban law. The applicant has submitted a birth certificate, issued by the Cuban government, to establish her claim.

Based on the revised 1999 Venezuelan Constitution, and evidence that the applicant has complied with the formalities stipulated by Article 29 of the Cuban Constitution, it is concluded that the applicant has established that she is a citizen of Cuba, she was inspected and admitted into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year. The applicant is, therefore, not precluded from adjustment of status under section 1 of the Cuban Adjustment Act of November 2, 1966. The acting district director did not raise any other basis for denial, nor are there known grounds of inadmissibility.

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

ORDER: The AAO's decision dated December 27, 2002 is withdrawn. The application is approved.