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*AD*

U.S. Department of Homeland Security  
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Washington, DC 20536



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

[REDACTED]

FILE:

[REDACTED]

Office: MIAMI, FLORIDA

Date:

**APR 13 2004**

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)

ON BEHALF OF PETITIONER:

[REDACTED]

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.

*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 The motion will be granted, the previous decision of the AAO will be withdrawn, and the application will be approved.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 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 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, (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 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 as the spouse of a native or citizen of Cuba, pursuant to section 1 of the CAA, because his spouse's application had been denied for failure to demonstrate that she is a Cuban citizen.

Upon review of the record of proceeding available on certification, the AAO determined that although the applicant's spouse obtained a Cuban birth certificate, Venezuela did not recognize dual citizenship, and the record was devoid of evidence establishing that the applicant's spouse 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 did not meet the requirements of section 1 of the CAA because his spouse had failed to establish that she is a citizen of Cuba.

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's spouse claimed that she is a Cuban citizen, pursuant to Article 29 of the Cuban Constitution, because one of her parents is Cuban, and she has complied with the formalities stipulated by Cuban law. She 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's spouse has complied with the formalities stipulated by Article 29 of the Cuban Constitution, it was concluded that his spouse had established that she is a citizen of Cuba. Subsequently, the AAO approved the application for adjustment of status submitted by the applicant's spouse pursuant to section 1 of the CAA.

Accordingly the applicant in the present case is eligible for adjustment of status as the spouse of a native or citizen of Cuba, pursuant to section 1 of the CAA of November 2, 1966. The record of proceedings reflects that the applicant 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 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.