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

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U.S. Citizenship  
and Immigration  
Services



FILE: [REDACTED] Office: MIAMI, FLORIDA Date: APR 16 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:



**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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office for review. The district director's decision will be affirmed.

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 (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 district director found the applicant inadmissible to the United States because he falls within the purview of sections 212(a)(6)(C)(i) and 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (A)(6)(C)(i) and § 1182 (A)(6)(C)(ii). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(ii) Falsely claiming citizenship-

(I) IN GENERAL- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(II) EXCEPTION- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the district director's findings. Counsel submits a brief and an affidavit from the applicant. In the brief and in the affidavit counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C)(ii) because he did not use the photo-substituted U.S. passport to apply for entry into the United States. In his affidavit the applicant states that

he immediately presented himself to an immigration inspector and stated that he was a Cuban national and he wanted to apply for asylum. In addition he states that he was traveling with a friend and neither of them presented a U.S. passport to gain admission into the United States. He further states that he voluntarily stepped out of line and presented the immigration inspector his Cuban birth certificate.

The record clearly reflects that on October 4, 1999 the applicant attempted to procure admission into the United States at Miami International Airport. He falsely represented himself to be a United States citizen and supported his claim by presenting a United States photo substituted passport that did not belong to him. The record shows that the applicant presented the photo-substituted passport to an immigration inspector during a planeside document check. The applicant presented the U.S. passport and when asked, gave the name of the individual in the passport. He was escorted to secondary inspection for further inspection. During an interview in secondary the applicant admitted under oath that he procured the photo-substituted U.S. passport for \$2,000 and used it to travel from Cuba to Mexico City and then to Miami. Furthermore he stated under oath that he presented the U.S. passport to an immigration inspector upon arrival.

By presenting a passport in an assumed name in an attempt to gain entry into the United States by fraud and willful misrepresentation of a material fact the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Act. In addition, by making a false claim to U.S. citizenship the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act.

Notwithstanding the arguments on appeal, section 212(a)(6)(C)(ii) of the Act is very specific and applicable. In the present case the applicant is subject to the provision of section 212(a)(6)(C)(ii) of the Act and he is not eligible for any relief under this Act.

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

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