



U.S. Citizenship  
and Immigration  
Services

A2



FILE:



Office: MIAMI, FLORIDA

Date:

APR 20 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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identifying information to  
prevent clearly unwarranted  
invasion of personal privacy

**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 The acting district director's decision will be withdrawn and the application approved.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 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 acting district director determined that the applicant was not eligible for adjustment of status, pursuant to section 1 of the CAA, because her claim of citizenship at the time of entry into the United States was Venezuelan and she had not provided any official document recognizing her as a Cuban citizen. The acting district director concluded that the Service considers the applicant a citizen of Venezuela for immigration matters; therefore, she is not able to adjust status under section 1 of the CAA.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the acting district director's findings. In response to the notice of certification, counsel submits a brief stating that the Cuban government issued a birth certificate on behalf of the applicant for the purpose of acquisition of Cuban citizenship. Counsel further states that if the document did not certify Cuban citizenship it would not have been issued.

The record reflects that the applicant was born in Venezuela on August 25, 1973. Her mother and father were both born in Cuba. In 2000 she obtained a Cuban birth certificate based on the fact that her parents were Cuban citizens. The certificate was issued by the Cuban Consulate in Caracas, Venezuela and indicates that the birth was registered in the Republic of Cuba Civil Registry, but does not state that the applicant is a citizen of Cuba. The applicant entered the United States on numerous occasions as a visitor with a Venezuelan passport.

Although the birth certificate does not state that the applicant is a Cuban citizen, based on Article 29 of the Cuban Constitution the AAO finds that the applicant acquired Cuban citizenship at birth.

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.

Additionally the Venezuelan Constitution was amended in 1999 and now it states, in part:

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

In the present case, both of the applicant's parents are 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 to Cuban citizenship.

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.

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