U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TAMPA, FLORIDA Date: NOV 24 2004
SRC-02-104-53462

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 APPLICANT:

[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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) 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 she falls within the purview of section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant failed to show that she has a qualifying family member in order to be eligible to file for a waiver under section 212(i) of the Act. The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See District Director's Decision* dated March 9, 2004.

On appeal counsel submits a brief and an affidavit from the applicant. In the brief counsel states that the applicant arrived at the Miami International Airport on January 31, 2001, on board an American Airlines flight. According to counsel an American Airlines representative took the applicant's Ecuadorian passport and other documentation. In addition counsel states that after the applicant was placed in a waiting room she approached a security guard and told him she was Cuban. Furthermore counsel states that an immigration officer came to interview the applicant at which point she presented her Cuban birth certificate and never tried to deceive the Immigration Inspector. Counsel asserts that the applicant did not commit any fraud or willful misrepresentation to a United States official, has not been charged with fraud or misrepresentation and therefore her application for adjustment of status should be granted.

The AAO finds counsel's assertions unpersuasive. The applicant was found inadmissible by the District Director because on January 31, 2001, she used the Transit Without Visa (TRWOV) program solely for the purpose of reaching the United States and submitting an asylum application without any intention of pursuing the remainder of the journey.

In *Matter of Shirdel*, 19 I&N Dec. 33 (BIA 1984) the BIA found that Afghan nationals who arrived in the United States with fraudulent Turkish passports as transit without visa ("TRWOV") aliens in order to submit applications for asylum are excludable under the second clause of section 212(a)(19) of the Act, 8 U.S.C. § 1182(a)(19)(1982), for attempting to enter the United States by fraud or material misrepresentation.

Pursuant to section 101(a)(15)(C) of the Act, 8 U.S.C. § 1101(a)(15)(C)(1982), and 8 C.F.R. § 212.1(e)(1984), TRWOV aliens are exempt from the passport and visa requirements if they are in possession of travel documents establishing their identity, nationality, and ability to enter some other country.

However, 8 C.F.R. § 212.1(e)(3)(1984) specifies that the TRWOV privilege is unavailable to citizens or nationals of Afghanistan, Cuba, Iraq, or Iran.

In *United States v. Kavazanjian,* 623 F.2d 730 (1st Cir. 1980), the court held that if an alien adopts the TRWOV device solely for the purpose of reaching the United States and submitting an asylum application without any intention of pursuing the remainder of the journey, it constitutes a fraud on the United States. The TRWOV device is designed to facilitate international travel by permitting aliens traveling between foreign countries to make a stopover in the United States without presenting a passport or visa. See section 212(d)(4)(C), 8 U.S.C. § 1182(d)(4)(C)(1982). To avail himself of the TRWOV privilege an alien must establish that he is admissible under immigration law; that he has confirmed an onward reservation to at least the next country beyond the United States; and that he will continue his journey and depart this country within 8 hours after his arrival or on the next available transport. See 8 C.F.R § 214.2(c) (1982); 22 C.F.R. § 41.30 (1984).

The applicant in the present case clearly intended to enter the United States in order to apply for asylum and she had not intention to continue her trip to France. She was precluded from obtaining TRWOV status as a Cuban national and she purchased a fraudulent Ecuadorian passport in order to obtain TRWOV status, travel to the United States, and apply for asylum. Based on the above the applicant is clearly inadmissible under section 212(a)(6)(C) of the Act, for attempting to procure admission into the United States by fraud or material misrepresentation.

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.

Section 212(i) of the Act provides that:

> The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

As stated above section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident spouse or parent.

A review of the documentation in the record reflects that the applicant does not have a qualified family member in order to be eligible to file for a waiver under section 212(i) 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 she is eligible for adjustment of status. She has failed to meet that burden. The decision of the District Director to deny the application will be affirmed.

ORDER: The District Director's decision is affirmed.