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U.S. Citizenship
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FILE:



Office: TEXAS SERVICE CENTER

Date: AUG 15 2005

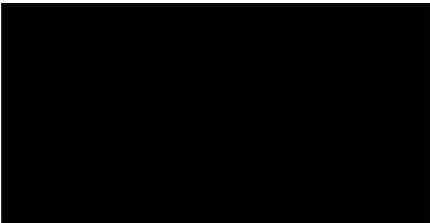
IN RE:

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

DISCUSSION: The application was denied by the Director, Texas Service Center, who certified her decision to the Administrative Appeals Office for review. The director's decision will be withdrawn, and the application will be approved.

The applicant is a native of Cuba and citizen of Sweden 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. This Act 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, 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 Director determined that the applicant was not eligible for adjustment of status, pursuant to section 1 of the CAA, because his claim of citizenship at the time of entry into the United States was Swedish. The Director stated that the Board, in *Matter of Ognibene*, 18 I&N Dec. 425 (BIA 1983), came to the conclusion that although an alien may hold the phenomenon of dual nationality, an alien may only claim one citizenship at a time for purposes of immigration matters within the United States. The Director concluded that the Service considers the applicant a national of Sweden for immigration matters; therefore, he is not able to adjust status under section 1 of the CAA of November 2, 1966. See *Director's Decision* dated May 31, 2002.

In response to the notice of certification, counsel states that the applicant was denied in error. Counsel states that the applicant was born in Cuba and that he is a citizen of both Cuba and Sweden. Counsel does not disputed the fact that the applicant entered the United States on or about June 18, 1999 as a citizen of Sweden but states that the Director erred in denying the application based on *Matter of Ognibene*. Furthermore counsel states that *Matter of Ognibene* involved an applicant for a treaty investor visa, not an applicant for adjustment of status pursuant to section 1 of the CAA. Finally counsel states the section 1 of the CAA requires that an applicant be a native or citizen of Cuba and does not require that the nationality of the applicant be defined and therefore the Director's decision should be reversed.

The record of proceeding contains a copy of the applicant's birth certificate and his Cuban passport indicating that the applicant was born in Cuba on May 29, 1966. On December 3, 2000, he was admitted into the United States as a visitor for pleasure with a Swedish passport.

The AAO has determined that *Matter of Ognibene* is not relevant to CAA applications as it relates to non-immigrant applications whereas the CAA is an application for immigrant status.

The applicant, in this case, is applying for adjustment of his status to permanent residence under section 1 of the CAA. To be eligible for adjustment of status under section 1 of the CAA, an alien must show only that he is a native or citizen of Cuba, he was inspected and admitted or paroled into the United States, he has been physically present in the United States for at least one year, and that he is admissible to the United States for permanent residence. See *Matter of Masson*, 12 I&N Dec. 699 (BIA 1968).

The applicant was born in Cuba. He is, therefore, a native of Cuba, he was inspected and admitted into the United States subsequent to January 1, 1959, and he 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 CAA of November 2, 1966. The Director did not raise any other basis for denial, nor are there known grounds of inadmissibility.

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

ORDER: The Director's decision is withdrawn. The application is approved.