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

A2

FILE: Office: MIAMI, FLORIDA Date: JUL 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 APPLICANT: SELF-REPRESENTED

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 he 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) for having attempted to procure admission into the United States by fraud. The applicant failed to show that he has a qualified family member in order to be eligible to file for a waiver of inadmissibility 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 December 22, 2004.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. No additional evidence has been entered into the record.

The applicant was found inadmissible by the District Director because on March 24, 2002, he attempted to procure admission into the United States by fraud. The applicant arrived at the Miami International Airport from Honduras as a passenger under the Transit Without Visa (TWOV) program en route to Spain. The applicant traveled with a photo substituted Honduran passport. During secondary inspector the applicant admitted under oath that the purpose of his trip was to live and work in the United States with no 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 ("TWOV") 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), TWOV 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 TWOV 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 TWOV 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 TWOV 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 TWOV privilege an alien must establish that he is admissible under the immigrant laws; 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 no 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 he had no intention to continue his trip to Spain. He was precluded from obtaining TWOV status as a Cuban national and he purchased a Honduran passport in order to obtain TWOV 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 willful misrepresentation of a material fact.

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 the qualifying family member required to file 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 he is eligible for adjustment of status. He 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.