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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

A2

FILE: [redacted] Office: MIAMI, FLORIDA Date: JUL 15 2005

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 The District Director's decision will be withdrawn, and the matter will be remanded to him for further action.

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 determined that the applicant was not eligible for adjustment of status because he was not inspected and admitted or paroled into the United States. The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See District Director's Decision* dated November 5, 2004.

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 in which he states that the applicant was inspected and admitted to the United Stases as required by the CAA of November 2, 1966. Counsel states that the applicant presented himself to an immigration inspector at a port of entry and although he presented a false Spanish passport he was inspected and admitted and he was issued an Arrival-Departure Record (Form I-94). Counsel refers to several Board of Immigration Appeals (BIA) decisions that state that if the inspector was given the full and fair opportunity to inspect the alien, the alien has been inspected and admitted. Counsel does not dispute the fact that the applicant presented a fraudulent Spanish passport to the immigration inspector. Counsel further states that although the applicant presented a fraudulent passport he was inspected and admitted and he should be give the opportunity to submit an Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, (the Act).

The record clearly reflects that the applicant knowingly obtained a photo-substituted Spanish passport and on October 23 1999, at the JFK New York International Airport he applied for admission into the United States. The applicant was admitted as a non-immigrant visitor for pleasure and was issued an Arrival-Departure Record (Form I-94). The applicant is clearly inadmissibly pursuant to section 212(a)(6)(C) of the Act for having procured admission into the United States by fraud.

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.

In *Matter of V-Q-*, 9 I&N Dec. 78 (BIA 1960), the BIA states:

> "Admission" occurs when an authorized employee of the Service communicates in a tangible manner to an applicant for admission his determination that the applicant has established that he is not inadmissible under the immigration laws. At the point such communication is made and received by the applicant, "admission" has occurred. . ."

Based on the above the AAO finds that the District Director erred in finding that the applicant was not inspected and admitted into the United States. This office finds that although the applicant was inspected and admitted into the United States he is clearly inadmissible under section 212(a)(6)(C) of the Act.

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 record of proceeding reveals that the applicant is married to a Lawful Permanent Resident (LPR) and therefore he appears to have the qualifying family member required to file a Form I-601 under section 212(i) of the Act. Accordingly the District Director's decision will be withdrawn and the record will be remanded to him in order to allow the applicant the opportunity to submit a Form I-601 under section 212(i) of the Act.

ORDER: The District Director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion.