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

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U.S. Citizenship and Immigration Services

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MAY 20 2005

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date:

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 PETITIONER: 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)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (A)(6)(C)(ii). The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See District Director's Decision* dated April 27, 2004.

The AAO notes that the record contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28) that is not signed by the applicant. Therefore the AAO will not be sending a copy of the decision to the attorney mentioned on the Form G-28, but this office will accept the submitted information.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

. . . .

> (ii) Falsely claiming citizenship-
>
> (I) IN GENERAL- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.
>
> (II) EXCEPTION- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

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 she states that at no time did the applicant claim to be a United States citizen. Counsel refers to the interview conducted on February 24, 2000, when the applicant

answered under oath that he is a citizen of Cuba. In addition counsel states that the applicant was placed in proceedings in San Diego, CA and charged with violation of sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Act but was never charged with section 212(a)(6)(C)(ii) of the Act. Counsel further states that the proceedings were terminated on March 21, 2001, without sustaining the charges nor were any additional charges levied against the applicant. Furthermore counsel states that the applicant's previous counsel pointed out that he may have represented himself to be a U.S. citizen but there was a timely retraction of the claim. Counsel asserts that due to the applicant's timely retraction, he was never charged with a false claim of U.S. citizenship. Finally counsel states that since the applicant was never charged with falsely claiming to be a U.S. citizen he should be granted adjustment of status pursuant to section 1 of the CAA of November 2, 1966.

Counsel's statements are not persuasive. The removal proceedings were terminated because a prior order of exclusion against the applicant, issued on January 7, 1992, by an Immigration Judge, remained valid. In a letter submitted by the applicant's previous attorney she does not dispute the fact that the applicant represented himself to be a U.S. citizen. The attorney wrote in her letter: "The respondent said he was a U.S. citizen . . ." The record clearly reflects that on February 23, 2000, the applicant applied for admission into the United States at the San Ysidro Port of Entry. At the primary line of inspection he made an oral claim to U.S. citizenship. After the applicant was asked if he had a permanent resident card he stated for a second time that he was a U.S. citizen. It was not until he was referred to secondary inspection and was placed under oath that he admitted to being a Cuban citizen and not a citizen of the United States. This cannot be considered a timely retraction of his previous statements. A false representation of U.S. citizenship may be either an oral representation or one supported by an authentic or fraudulent document. In the present case the applicant twice falsely claimed U.S. citizenship in order to gain admission into the United States. Based on the above facts the AAO finds that the applicant is clearly inadmissible under section 212(a)(6)(C)(ii) of the Act.

Notwithstanding the arguments on appeal, section 212(a)(6)(C)(ii) of the Act is very specific and applicable. In the present case the applicant is subject to the provision of section 212(a)(6)(C)(ii) of the Act and there is no waiver available.

The applicant is ineligible for adjustment of status to permanent residence, pursuant to section 1 of the CAA of November 2, 1966. The decision of the District Director to deny the application will be affirmed.

ORDER: The District Director's decision is affirmed.