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

A2

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: NOV 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 The District Director's decision will be withdrawn, and the matter will be remanded to him for further action.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 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). The applicant failed to show that he 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 accordingly. *See District Director's Decision* dated May 31, 2005.

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.

The record clearly reflects that the applicant knowingly obtained a photo-substituted Spanish passport and on July 15, 1999, at the Hartsfield International Airport, Atlanta, Georgia, used that document in an attempt to gain admission into the United States by fraud and willful misrepresentation of a material fact. The applicant is therefore inadmissible pursuant to section 212(a)(6)(C)(i) 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, a U.S. citizen or lawfully resident spouse or parent.

The record reflects that on July 29, 2004, the applicant appeared before Citizenship and Immigration Services, (CIS) for an interview regarding his application for permanent residence. On the same date, after the applicant was found inadmissible pursuant to section 212(a)(6)(C) of the Act, the applicant stated that he did not have a qualifying relative to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) under section 212(i) of the Act. On September 21, 2004, the applicant appeared with the mother of his children for a follow-up interview. The applicant stated the he was not married because the divorce decree from his previous marriage was not final. In addition, it was determined that his parents were neither residents nor citizens of the United States. The applicant failed to show that he had a qualified family member in order to be eligible to file for a waiver under section 212(i) of the Act and the application was denied accordingly.

On Notice of Certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. In response to the Notice of Certification, counsel submits a brief, a copy of a marriage certificate, a copy of the applicant's spouse's permanent resident card, copies of the applicant's children's birth certificates and a copy of his mother's permanent resident card. In his brief counsel states that the District Adjudications Officer (DAO) was mistaken in his conclusion of the facts since the applicant does possess the requisite family relationship to file a Form I-601. The marriage certificate indicates that the applicant was married on November 8, 2004. In addition, the copy of the permanent resident card issued to the applicant's mother indicates that she was granted LPR status on April 25, 2005.

A review of the documentation in the record reflects that at the time the applicant's application for adjustment of status was adjudicated he did not have a qualifying family member in order to be eligible to file for a waiver under section 212(i) of the Act and therefore, the District Director's decision was not inaccurate. The applicant now has the required family members, his LPR spouse and mother.

Accordingly, the District Director's decision will be withdrawn and the record will be remanded to him in order to give the applicant the opportunity to file a Form I-601 pursuant to 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.