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

A2

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: SEP 30 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: 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 she 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 she 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 July 10, 2004.

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 October 15, 2001, at the Orlando, Florida International Airport 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, citizen or lawfully resident spouse or parent.

A review of the documentation in the record reflects that the applicant's father resides in Cuba, her mother is deceased and her spouse is not a lawful permanent resident or citizen of the United States. The applicant has failed to show that she has a qualified family member in order to be eligible to file for a waiver under section 212(i) of the Act.

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.

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 she is eligible for adjustment of status. She 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.