



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

A2

[REDACTED]

FILE:

[REDACTED]

Office: MIAMI, FLORIDA

Date: AUG 16 2007

IN RE:

[REDACTED]

APPLICATION:

Application for Adjustment of Status to that of Person Admitted for Permanent Residence under Section 1 of Pub. L. 89-732 (November 2, 1966), as amended, the Cuban Adjustment Act.

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, Chief
Administrative Appeals Office

DISCUSSION: The Acting District Director, Miami, Florida, denied the application for adjustment of status and then certified the decision to the Administrative Appeals Office (AAO) for review. The decision of the Acting District Director will be withdrawn and the application approved.

The applicant is a native and citizen of Venezuela who was admitted to the United States on May 5, 2002 on a Venezuelan passport as an F-1 student. On September 15, 2003 she submitted an application to adjust status to permanent resident pursuant to Section 1 of Pub. L. 89-732 (November 2, 1966), as amended, the Cuban Adjustment Act.

The Acting District Director denied the application to adjust status, finding the applicant had not established that she was a citizen of Cuba and was therefore ineligible to adjust status under the Cuban Adjustment Act. *Decision of the Acting District Director*, dated December 22, 2005.

The applicant, through counsel, asserts that she had demonstrated that she is a citizen of Cuba and eligible to adjust status pursuant to the Cuban Adjustment Act. *Statement from counsel*, dated April 28, 2006.

Section 1 of the Cuban Adjustment Act states, in pertinent part:

[N]otwithstanding the provisions of section 245(c) of the [Immigration and Nationality Act] the 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 [Secretary of Homeland Security], 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 application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

There is no dispute as to the relevant facts in this matter. The applicant was born in Venezuela on October 16, 1979 to a Venezuelan mother and a Cuban father. *See applicant's birth certificate*. Her claim to citizenship is through her Cuban citizen father. In order to establish eligibility under the Cuban Adjustment Act, the applicant must demonstrate that she is a Cuban citizen. In a decision adopted as binding policy on CIS on July 31, 2007, the AAO found:

Individuals born outside Cuba whose Cuban citizenship is not documented with a Cuban passport, may establish Cuban citizenship for the purposes of adjustment under the Cuban Adjustment Act through the submission of a Cuban birth certificate issued by the Civil Registry of Cuba in Havana, or a Cuban consular certificate documenting their birth to at least one Cuban parent within the consular district served by the consulate.

This binding policy was decided after the present application was filed. It resolves issues concerning the proof required to establish the Cuban citizenship of an individual born to a Cuban parent outside Cuba whose citizenship is not documented with a Cuban passport. In support of her claim to Cuban citizenship, the applicant submitted copies of her father's Cuban birth certificate, her Venezuelan birth certificate, and a Cuban consular certificate documenting the applicant's birth to her Cuban citizen father. *See birth certificates*

for the applicant and her father, and Cuban consular certificate. Based on the record, the applicant has established that she is a citizen of Cuba for the purposes of adjusting status under the Cuban Adjustment Act.

An applicant must demonstrate by a preponderance of the evidence that she is eligible for the benefit sought. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, places the burden of proof upon the applicant to establish that eligibility. The applicant has met her burden of proof. The applicant is a Cuban citizen who has been inspected and admitted into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year. Therefore, she is eligible to adjust her status under the Cuban Adjustment Act. The Acting District Director's decision will be withdrawn and there is nothing in the record to show that the applicant is inadmissible. In that the AAO finds that the applicant warrants a favorable exercise of discretion, the application for adjustment of status will be approved.

ORDER: The decision of the Acting District Director is withdrawn and the application for adjustment of status approved.