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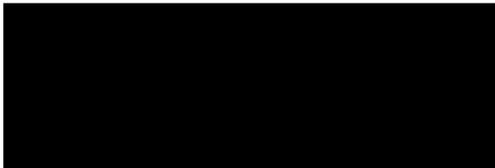
IN RE:

Applicant:



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:



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 application was denied by the District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The decision of the District Director is affirmed and the application will be denied.

The applicant is a native and citizen of Cuba who filed an 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 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) for having attempted to procure admission into the United States by fraud and willful misrepresentation of a material fact. The District Director concluded that the applicant was ineligible for adjustment of status and denied the application. *See District Director's Decision*, dated June 9, 2005.

Counsel asserts that the applicant did not engage in misrepresentation, as he did not have possession of the Paraguayan passport he had used, and he disclosed his true identity and Cuban nationality upon arrival to the United States. *Attorney's brief*. Counsel further stated that the inadmissibility ground that is based on an alien's having arrived at a place other than a port-of-entry does not apply to individuals seeking to adjust their status under the Cuban Adjustment Act.

The record reflects that on November 1, 2002, the applicant arrived at Miami International Airport, a designated port of entry, from Sao Paulo, Brazil. *Form I-275, Withdrawal of Application for Admission/Consular Notification*. He was presented by an airline representative to a United States immigration inspector on primary inspection as a passenger in transit to Nassau, Bahamas under the Transit Without Visa (TWOV) program. *Id.* During the primary inspection, the airline representative gave the U.S. immigration inspector a Paraguayan passport in the name of [REDACTED] at which time the applicant divulged his correct name and Cuban nationality. *Id.* The applicant was referred to secondary inspection along with his son to be processed. *Id.* During secondary inspection, the applicant again stated he was Cuban. *Form I-877, Record of Sworn Statement in Administrative Proceedings*. He also stated that it was not his intention to travel to the Bahamas and that an airline representative in Brazil filled out the Form I-94T on his behalf. *Id.*; *See Also Memorandum from Immigration Inspector, dated November 1, 2002.*

While the AAO acknowledges counsel's assertions and that the applicant stated his true Cuban identity during the primary inspection process, he is still inadmissible under Section 212(a)(6)(C)(i) of the Act, for he was traveling under the TWOV privilege. In *Matter of Shirdel*, 19 I&N Dec. 33 (BIA 1984), the BIA found that Afghan nationals who arrived in the United States with fraudulent Turkish passports as TWOV aliens in order to submit applications for asylum were excludable under the second clause of section 212(a)(19) of the Act, 8 U.S.C. § 1182(a)(19)(1982), for attempting to enter the United States by fraud or material misrepresentation. The BIA found that though they did not present the fraudulent passports to an official, the fraud was an integral step in their scheme to eventually enter the United States.

Pursuant to section 101(a)(15)(C) of the Act, 8 U.S.C. § 1101(a)(15)(C)(1982), and 8 C.F.R. § 212.1(e)(1984), TWOV aliens are exempt from the passport and visa requirements if they are in possession of travel documents establishing their identity, nationality, and ability to enter some other country. However, 8 C.F.R. § 212.1(e)(3)(1984) specifies that the TWOV privilege is unavailable to citizens or nationals of Afghanistan, Cuba, Iraq, or Iran.

In *United States v. Kavazanjian*, 623 F.2d 730 (1st Cir. 1980), the court held that if an alien adopts the TWOV device solely for the purpose of reaching the United States and submitting an asylum application without any intention of pursuing the remainder of the journey, it constitutes fraud upon the United States. The TWOV device is designed to facilitate international travel by permitting aliens traveling between foreign countries to make a stopover in the United States without presenting a passport or visa. See section 212(d)(4)(C), 8 U.S.C. § 1182(d)(4)(C). To avail himself of the TWOV privilege, an alien must establish that he is admissible under the immigration laws; that he has confirmed an onward reservation to at least the next country beyond the United States; and that he will continue his journey and depart the United States within eight hours after his arrival or on the next available transport. See 8 C.F.R. § 214.1(f); 22 C.F.R. § 41.2(i)(I).

The applicant in the present case clearly intended to enter the United States, and he had no intention of continuing his trip to the Bahamas. He was precluded from obtaining TWOV status as a Cuban national and so he purchased a Paraguayan passport in order to obtain TWOV status, travel to the United States, and remain here. Based on the above, the applicant is clearly inadmissible under section 212(a)(6)(C)(i) of the Act, for attempting to procure admission into the United States by fraud or willful misrepresentation of a material fact. As the applicant does not have a qualifying relative, he is not eligible for a waiver of this ground of inadmissibility.

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 he is eligible for adjustment of status. He has failed to meet that burden. Accordingly, the decision of the District Director will be affirmed.

**ORDER:** The decision of the District Director is affirmed and the application is denied.