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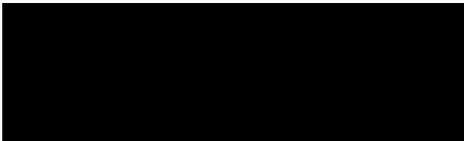
IN RE:

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 PETITIONER:



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 Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The AAO affirmed the Acting District Director's decision. The matter is now before the AAO on a motion to reopen. The motion will be granted and the previous decisions of the Acting District Director and the AAO 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 Acting 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) as an alien who falsely represents himself to be a citizen of the United States for any purpose or benefit under this Act. *See Acting District Director Decision* dated June 3, 2003. The decision was affirmed by the AAO. *See AAO decision*, dated September 25, 2003

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.

There is no waiver available under this section of the Act.

In the motion to reopen counsel submits a brief and an affidavit from the applicant. Both the brief and the affidavit assert that the applicant is not inadmissible under section 212(a)(6)(C)(ii) because he did not use the photo-substituted U.S. passport to apply for entry into the United States. In his affidavit the applicant states that upon arrival in the United States, and as soon as he stepped off the aircraft, he was detained and escorted by two

Immigration Officers to a cold room where he was stripped and searched. He further states that during the search, the Immigration Officers found the U.S. passport and his Cuban birth certificate which he intended to provide to United States officials and seek asylum in the United States. He further states that he never presented the passport to any authority in the United States nor did he make any statement to represent himself to be a U.S. citizen.

The record clearly reflects that on September 14, 2000, the applicant attempted to procure admission into the United States at the Miami, Florida International Airport. The record shows that the applicant presented a United States photo-substituted passport to an immigration inspector after disembarking the aircraft. He was escorted to secondary for further inspection. During an interview in secondary the applicant admitted under oath that he procured the photo-substituted U.S. passport, for a fee between \$500 and \$600, and used it to travel from Cuba to Miami. Furthermore he stated under oath that he presented the U.S. passport to an immigration inspector upon arrival, that he was aware that it is illegal to attempt entry into the United States by claiming to be a U.S. citizen and that the passport was not a valid one. The applicant signed a statement at the end of the declaration that the statements contained therein were true and correct.

By presenting a passport in an assumed name in an attempt to gain entry into the United States by fraud and willful misrepresentation of a material fact the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act.

The issues in this matter were thoroughly discussed by the acting district director and the AAO in their prior decisions. 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 he is not eligible for any relief under this Act.

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.

The applicant is ineligible for adjustment of status to permanent residence, pursuant to section 1 of the CAA of November 2, 1966. Accordingly, the prior AAO decision affirming the director's decision will remain undisturbed.

ORDER: The order of September 25, 2003, dismissing the appeal is affirmed.