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**U.S. Citizenship
and Immigration
Services**



L7

FILE:



Office: MIAMI, FLORIDA

Date:

MAY 20 2004

IN RE:

Applicant:



APPLICATION: Application for Permanent Residence Pursuant to Section 202 of the Immigration Reform and Control Act of 1986 as it pertains to Cuban-Haitian Adjustment (P.L. 99-603)

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, the district director's decision withdrawn and the application approved.

The applicant is a native and citizen of Bahamas who filed this application for adjustment of status to that of a lawful permanent resident under the Immigration Reform and Control Act of 1986, section 202 as it pertains to Cuban-Haitian Adjustment applicants.

Section 202 Cuban-Haitian Adjustment provides, in part:

(a) Adjustment of Status.--The status of any alien described in subsection (b) may be adjusted by the Attorney General, in the Attorney General's discretion and under such regulations as the Attorney General may prescribe, to that of an alien lawfully admitted for permanent residence if--

(1) the alien applies for such adjustment within two years after the date of the enactment of this Act;

(2) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence. . . .

(b) Aliens Eligible for Adjustment of Status.--The benefits provided by subsection (a) shall apply to any alien--

(1) who has received an immigration designation as a Cuban/Haitian Entrant (Status Pending) as of the date of the enactment of this Act, or

(2) who is a national of Cuba or Haiti, who arrived in the United States before January 1, 1982, with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982, and who (unless the alien filed an application for asylum with the Immigration and Naturalization Service before January 1, 1982) was not admitted to the United States as a nonimmigrant.

The district director denied the application after determining that the applicant was not eligible for adjustment of status under the Immigration Reform and Control Act of 1986, section 202 because she failed to establish that she is a national of Haiti. See *District Director's Decision* dated January 18, 2000.

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, copies of the Haitian Constitution provided by the Law Library of Congress, copies of the applicant's mother's baptismal certificate, father's passport and affidavits from the applicant's parents.

Article 11 of the 1987 Haitian Constitution reads:

All person born of a Haitian father or a Haitian mother - who are themselves native-born Haitian and have never renounced their nationality - possess Haitian nationality at the time of birth.

The Decree of November 6, 1984 provides in part:

Nationality or Origin:

Article 2: the following categories of persons possess Haitian nationality at birth:

....

Any person born abroad, of a Haitian father and mother. . . .

Based on the above articles of the Haitian Constitution the applicant possesses Haitian nationality at birth if she can prove that her parents were Haitian nationals.

Counsel asserts that both of the applicant's parents were born in Haiti. To support her assertion counsel submits copies of M. [REDACTED] baptismal certificate and of Mr. [REDACTED] passport. The baptismal certificate and the passport show that both Ms. [REDACTED] and Mr. [REDACTED] were born in Haiti. Counsel submits a copy of the applicant's passport, which shows that the applicant was born in Nassau, Bahamas on December 7, 1970, and affidavits for Ms. [REDACTED] and M. [REDACTED] stating that the applicant is their daughter.

Based on the Article 11 of the 1987 Haitian Constitution and evidence that the applicant's parents were born in Haiti, it is concluded that the applicant has established that she is a national of Haiti. The applicant is, therefore, eligible for adjustment of status under the Immigration Reform and Control Act of 1986, section 202 as it pertains to Cuban-Haitian Adjustment applicants. The district director did not raise any other basis for denial, nor are there known grounds of inadmissibility.

Accordingly, the district director's decision will be withdrawn, and the application will be approved.

ORDER: The appeal is sustained, the district director's decision is withdrawn and the application is approved.