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AUG 28 2006

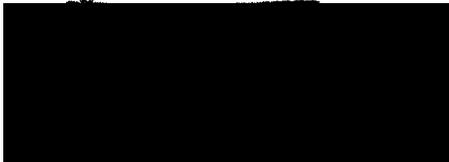
IN RE:

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 Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The Acting District Director's decision will be withdrawn, and the matter will be remanded to her for further action.

The applicant is a citizen of Venezuela 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 CAA provides, in pertinent 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 determined that the applicant was not eligible for adjustment of status, pursuant to section 1 of the CAA, because he failed to establish that he is a native or citizen of Cuba. *See Acting District Director's Decision* dated May 4, 2006.

The record reflects that the applicant was born in Venezuela on September 18, 1974, to a Venezuelan mother and a Cuban father. The applicant entered the United States on October 19, 1995, as a non-immigrant visitor for pleasure in possession of a Venezuelan passport.

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 in which he states that according to the Adjudicator's Field Manual (the AFM) a person who was born outside of Cuba to Cuban parents derives Cuban citizenship *jus sanguinis* and should document his Cuban nationality by obtaining a Certificate of Cuban Nationality from the Cuban Interests Section in Washington, D.C. In addition, counsel states that although the AFM states that a consular birth certificate issued by a Cuban consul is not sufficient to prove eligibility for the CAA, the AAO has previously determined that consular birth certificates are sufficient for purposes of establishing eligibility under the CAA and submits copies of previous AAO decisions. Additionally, counsel states that the Government of Cuba does not recognize the U.S. nationality of U.S. citizens who are Cuban-born or are the children of Cuban parents. These individuals will be treated solely as Cuban citizens and may be subject to a range of restrictions and obligations, including military service. Counsel further states that the Library of Congress' report confuses the legal concepts of citizenship at birth, eligibility to apply for citizenship and eligibility for issuance of document to prove citizenship. Finally, counsel states that Acting District Director must evaluate the application by the preponderance of the evidence standard of proof and refers to a memorandum from Robert C. Divine, Acting Deputy Director, dated January 11, 2006.

The record of proceedings contains a birth certificate issued on June 24, 2004, by the General Consulate of the Republic of Cuba in Caracas, Venezuela. The certificate requests that the applicant be registered in the Special Registry of MINJUS (Ministry of Justice) as the son of a Cuban national. This birth certificate does not contain a statement regarding the applicant's citizenship and the record of proceedings does not reflect that the applicant actually registered his birth with the office of Special Registry of MINJUS. Therefore, the

birth certificate submitted is not sufficient to establish that the applicant is a Cuban citizen. The AAO acknowledges that in previous decisions it found that a birth certificate issued by a consular officer was sufficient to establish Cuban citizenship. However, after reviewing additional information from the Library of Congress and further investigation on its own, the AAO has determined that a consular certificate indicating that a person born outside Cuba to a Cuban citizen parent is not ordinarily sufficient in itself to establish that a person is a Cuban citizen. The AAO also determined that an alien should be afforded the opportunity to explain why additional documents that would establish Cuban citizenship are unavailable.

The applicant, in the present case, was not afforded an opportunity to explain why documents that would establish citizenship are unavailable. Accordingly, the Acting District Director's decision will be withdrawn and the record will be remanded to her in order to allow the applicant the opportunity to submit documentation indicating that he is a Cuban citizen, or explain why documents that would establish his citizenship are unavailable. The Acting District Director will enter a new decision, which, if adverse to the applicant, will be certified to the AAO for review.

**ORDER:** The Acting District Director's decision is withdrawn. The matter is remanded to her for further action consistent with the foregoing discussion.