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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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SEP 18 2007

FILE:

Office: DENVER, COLORADO

Date:

IN RE:

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:

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 District Director, Denver, Colorado, denied the application for adjustment of status and then certified the decision to the Administrative Appeals Office (AAO) for review. Counsel also submitted a Form I-1290B, Notice of Appeal to the AAO. The decision of the District Director will be withdrawn and the application approved.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 September 14, 2002 on a Venezuelan passport as a B-2 visitor. She extended her B-2 visitor status until September 14, 2003. On May 7, 2003 the applicant changed her status to that of H1-B1 nonimmigrant worker, valid until April 13, 2006. On May 28, 2004 the applicant submitted an application to adjust her status to that of lawful permanent resident pursuant to Section 1 of Pub. L. 89-732 (November 2, 1966), as amended, the Cuban Adjustment Act.

The 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 District Director*, dated September 1, 2006.

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. *Attorney's brief*.

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 February 25, 1959 to a Cuban mother and a Cuban father. *See applicant's birth certificate; passports for the applicant's parents; applicant's birth registration certificate issued by the Cuban Consulate in Venezuela.* Her claim to citizenship is through her Cuban citizen mother and 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 mother's Cuban passport, her father's Venezuelan passport, her Venezuelan birth certificate, a Cuban Civil Registry document, and a Cuban consular certificate documenting the applicant's birth to her Cuban citizen father. 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 District Director's decision will be withdrawn and there is nothing in the record to show that the applicant is inadmissible to the United States. 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 District Director is withdrawn and the application for adjustment of status approved.