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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

A2

[redacted]

FILE: [redacted] Office: KENDALL, FLORIDA Date: FEB 19 2010

MSC 09 057 13615

IN RE: Applicant: [redacted]

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:

[redacted]

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Kendall, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The director's decision will be withdrawn and the matter remanded for the continued processing of the applicant's adjustment of status application.

The applicant is a native and citizen of Cuba[1] 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 her discretion and under such regulations as she 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.

A review of the record reveals the following information and procedural history. The record includes the applicant's birth certificate showing she was born in Las Villas, Cuba, her Cuban passport and her Canadian passport number [redacted] issued April 27, 2007 containing 24 pages. At an interview before a United States Citizenship and Immigration Services (USCIS) officer on July 14, 2009, the applicant stated that she entered the United States on July 29, 2007 through the Canadian border using her Canadian landed immigrant documentation.

In the field office director's September 17, 2009 decision, the director determined that the applicant does not qualify under section 1 of the CAA because she was not paroled or admitted as a nonimmigrant and thus the application must be denied. The director certified his decision to the AAO for review.

On notice of certification, the applicant was offered an opportunity to submit evidence. Counsel submitted a brief and previously submitted documentation. On certification, counsel states that the applicant arrived in the United States on July 29, 2007 via Buffalo, New York and presented a Canadian passport and Canadian Citizenship cards to Department of Homeland Security officials. Counsel emphasizes that the applicant has provided proof of her nationality and numerous documents establishing continuous residency in Miami, Florida since August 2007 and is not otherwise ineligible for the relief sought.

Upon review of the evidence in the record and based upon the totality of the evidence, the AAO finds that the applicant meets the eligibility criterion specified in section 1 of the CAA regarding inspection and admission, and thus has met her burden of proof on this issue.

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 she is eligible for adjustment of status. The applicant has met

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[1] The applicant also holds Canadian citizenship as demonstrated by her Canadian passport and identity documents.

her burden. Accordingly, the AAO withdraws the decision of the director and remands the matter for the continued processing of the applicant's adjustment of status application.

ORDER: The director's decision is withdrawn. The matter is remanded for the continued processing of the applicant's adjustment of status application.