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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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

[REDACTED]

A2

DATE: **SEP 12 2012**

Office: ORLANDO, FL

FILE: [REDACTED]

IN RE:

[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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Acting District Director, Orlando, Florida, denied the application for adjustment of status and then certified the decision to the Administrative Appeals Office (AAO) for review. The decision of the Acting District Director will be affirmed.

The applicant is a native and citizen of Venezuela who was admitted to the United States on July 5, 2006 on a Venezuelan passport as a B-2 nonimmigrant visitor for pleasure with authorization to stay until January 4, 2007. On March 9, 2009 he submitted an application to adjust status to permanent resident pursuant to Section 1 of Pub. L. 89-732 (November 2, 1966), as amended, the Cuban Adjustment Act.

The Acting District Director denied the application to adjust status, finding the applicant had not established that he was a citizen of Cuba and was therefore ineligible to adjust status under the Cuban Adjustment Act because the applicant failed to submit requested evidence. Specifically, evidence to 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 his birth to at least one Cuban parent within the consular district served by the consulate. *Decision of the Acting District Director*, dated May 1, 2012.

The director certified her decision to the AAO for review and provided the applicant with a period of 30 days to supplement the record with a brief or any additional evidence. The applicant has not presented any evidence or arguments in rebuttal to establish that the director's decision was erroneous. As of this date, the AAO has not received any supplemental materials and considers the record complete.

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 May 7, 1972 to a Venezuelan mother and a Cuban father. *See applicant's birth certificate*. His claim to citizenship is through his Cuban citizen father. In order to establish eligibility under the Cuban Adjustment Act, the applicant must demonstrate that he 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 before 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 his claim to Cuban citizenship, the applicant submitted copies of his father's Cuban birth certificate, and his Venezuelan birth certificate. The record, however, does not include a Cuban birth certificate issued by the Civil Registry of Cuba in Havana, or a Cuban consular certificate documenting the applicant's birth to his Cuban citizen father. *See birth certificate for the applicant and his father.* The record, therefore, fails to establish that the applicant 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 he 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 failed to meet his burden of proof. Therefore, he is ineligible to adjust his status under the Cuban Adjustment Act.

ORDER: The decision of the Acting District Director is affirmed. The application for adjustment of status is denied.