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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**

A1

[Redacted]

FILE:

[Redacted]

Office: LAWRENCE FIELD OFFICE

Date: DEC 15 2010

IN RE:

Applicant:

[Redacted]

APPLICATION: Application for Adjustment of Status to that of Person Admitted for Permanent Residence under Section 1 of the Cuban Refugee 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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Lawrence, Massachusetts (the director). The director granted the applicant's subsequent motion to reconsider, affirmed his denial of the application and certified his decision to the Administrative Appeals Office (AAO) for review. The field office director's decision will be withdrawn and the matter remanded to the field office director for further processing of the application.

The applicant is a citizen and national of the Ukraine 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 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.

A review of the record reveals the following facts and procedural history: The applicant was born in Cuba as demonstrated by her birth certificate and a letter signed by [REDACTED]

[REDACTED] The applicant's birth certificate shows that her father is a Russian national and her mother is a Ukrainian national. The letter signed by [REDACTED], shows that the applicant's birth was recorded in the Principal Registry of Births in 1981, the year of the applicant's birth. The record also includes evidence that the applicant's parents resided in Cuba from March 1979 to April 1982. The applicant, prior to entering the United States resided in the Ukraine, her country of nationality and citizenship. The applicant initially entered the United States in or about May 2007 in H-4 classification. The applicant was admitted again in November 2008 and again on September 12, 2009. On November 5, 2009, the applicant filed the instant Form I-485, Application to Register Permanent Residence or Adjust Status, as a native of Cuba. The field office director requested evidence of the applicant's Cuban citizenship on December 1, 2009. Upon review of the evidence submitted in response to his request, the director denied the application, determining that the applicant was a citizen and national of the Ukraine and not a native of Cuba. The field office director certified his decision to the AAO on September 22, 2010, along with counsel for the applicant's motion, brief, and supporting documentation.

The issue in this matter is whether an individual born in Cuba but who has always retained her Ukrainian citizenship and nationality is eligible to apply for lawful permanent residence in the United States under section 1 of the CAA.

The first criterion of eligibility for adjustment of status under section 1 of the CAA is that the alien be "any alien who is a native or citizen of Cuba." The applicant clearly is not and does not claim to be a citizen of Cuba. The question then is whether the term "native" in section 1 of the CAA encompasses the applicant.

Statutory interpretation begins with the language of the statute itself. *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990). We are expected to give the words used in a statute their ordinary meaning. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The Second Circuit Court of Appeals, when construing the word “native,” determined that “[i]n its ordinary and natural meaning the word refers to a person’s place of birth. Hence a person remains a native of the country of his birth, although he has moved away and become a citizen or subject of another nation or government.”¹ *US ex rel. D’Esquiva v. Uhl*, 137 F.2d 903, 905 (2d Cir. 1943). The Board of Immigration Appeals (BIA) has determined that a man born in Cuba who was taken to Haiti by his parents where he lived until entering the United States was a citizen of Haiti, but remained a native of Cuba. *Matter of Masson*, 12 I & N Dec. 699 (BIA 1968). The BIA determined that the exact wording of the CAA is specific, clear and unambiguous in stating that the status of any alien who is a native or citizen of Cuba and who meets the other requirements is entitled to the benefits of the Act.²

In this matter, the applicant has presented documents, in addition to her birth certificate and the information supplied by the hospital where she was born, demonstrating that she was born in Cuba. Consequently,, the applicant is a native of Cuba.

The AAO notes that the field office director did not make any further findings regarding whether the applicant is otherwise eligible for adjustment under the provisions of the CAA. Thus, the matter must be remanded for the director to address any other issues. 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. Accordingly, the AAO withdraws the field office director’s decision and remands the matter for continued processing of the applicant’s Form I-485.

ORDER: The director’s decision is withdrawn. The matter is remanded to the director for entry of a new decision on the applicant’s Form I-485.

¹ *D’Esquiva v. Uhl* addressed the meaning of “native” in the term “all natives, citizens, denizens, or subjects of the hostile nation or government” of the Alien Enemy Act, 50 U.S.C. § 21 (1943).

² In *Matter of Masson*, the specific issue was whether the alien, who was a native of Cuba but who was not a refugee, was eligible to have his status adjusted under the Act of November 2, 1966. The BIA held that the alien, a native of Cuba, was so eligible.