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U.S. Citizenship
and Immigration
Services

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AUG 17 2007

FILE:

Office: TEXAS SERVICE CENTER

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:

SELF-REPRESENTED

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Acting Director, Texas Service Center, denied the motion to reopen 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 The decision of the Acting District Director will be withdrawn and the application remanded to the Texas Service Center. The AAO notes that the individual who filed a Form G-28, Notice of Entry of Appearance as Attorney or Representative is not an attorney and does not provide any legal authority allowing representation. As such, the AAO will not recognize this individual as a representative.

The applicant is a native and citizen of Venezuela who was admitted to the United States on September 28, 2002 on a Venezuelan passport as a B-2 visitor valid until March 22, 2003. On August 6, 2004 he submitted an application to adjust status to permanent resident pursuant to Section 1 of [REDACTED] (November 2, 1966), as amended, the Cuban Adjustment Act. *Form I-485*.

The Acting 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. *Decision of the Acting Director*, dated June 4, 2005.

In a motion to reopen or reconsider, received July 6, 2005, the applicant asserted that he had demonstrated that he is a citizen of Cuba and eligible to adjust status pursuant to the Cuban Adjustment Act. In support of this assertion, the applicant re-submitted documentation from the General Counsel of the Republic of Cuba in Caracas, Venezuela registering the applicant's birth with the Ministry of Justice as the status of a son of a Cuban citizen. *See Registration of Civil State, Certification of Birth Certificate*, dated July 8, 2004. The applicant also re-submitted a copy of his father's birth certificate showing that his father is a Cuban citizen. *See copy of father's birth certificate*.

On October 25, 2005 the Acting Director denied the motion to reopen for failure to establish that the original decision was in error based on evidence in the record at the time of the decision. *Decision of the Acting Director*, dated October 25, 2005. The Acting Director then certified this decision to the Administrative Appeals Office (AAO).

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 24, 1974 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 after the present application was filed. It resolves issues concerning the proof required to establish the Cuban citizenship of an individual born outside Cuba to a Cuban parent where Cuban 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, his Venezuelan birth certificate, and a Cuban consular certificate documenting the applicant's birth to his Cuban citizen father. *See birth certificates for the applicant and his father, and Cuban consular certificate.* Based on the record, the applicant has satisfied that although a citizen of Venezuela he 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. While the applicant has demonstrated that he 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, the AAO notes that on the Form I-485 the applicant states that he has been "arrested, cited, charged, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations." *See Form I-485, Application to Adjust Status.* The record indicates that the applicant stated he pled guilty to shoplifting and had to pay a fine. *Form I-867A, Record of Sworn Statement,* dated September 28, 2002. Service records show that the applicant has two arrests for petit larceny. There is no additional documentation included in the record regarding the applicant's criminal history. As the record is unclear as to the applicant's arrests and possible convictions, the AAO remands the case to the Texas Service Center to obtain certified copies from the applicant of all arrest records and court dispositions to determine whether the applicant is inadmissible. If the applicant is found admissible, the AAO finds that he has satisfied the requirements necessary to adjust his status under the Cuban Adjustment Act.

ORDER: The decision of the Acting Director is withdrawn and the application for adjustment of status will be remanded to the Texas Service Center to obtain the applicant's criminal records and determine admissibility.