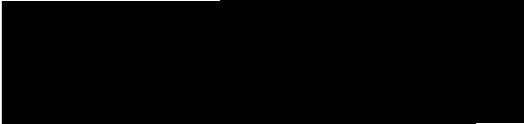




U.S. Citizenship
and Immigration
Services

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FILE:



Office: MIAMI, FLORIDA

Date:

AUG 28 2008

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Miami, 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 District Director will be affirmed.

The applicant is a native and citizen of Venezuela who was last admitted to the United States on January 5, 2002 on a Venezuelan passport as a B-2 visitor. On December 28, 2006 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 District Director denied the application to adjust status, finding the applicant had not established that he was a citizen of Cuba, nor had he established that his parents were citizens of Cuba, and he was therefore ineligible to adjust status under the Cuban Adjustment Act.

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.

The applicant listed his place of birth as Cuba on his Form I-485, Application to Register Permanent Residence or Adjust Status; Form G-325A, Biographic Information sheet; and Form I-693, Medical Examination of Aliens Seeking Adjustment of Status. The applicant also stated on his Form G-325A, Biographic Information sheet that both of his parents were born in Cuba. The record includes a Cuban birth certificate for the applicant, noting that the applicant and both of his parents were born in Cuba. The record also includes a photocopy of the applicant's Venezuelan passport, stating that he was born in Maracaibo, Venezuela. According to United States Department of State records, the applicant and both of his parents were born in Venezuela.

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 decision was issued 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. As the record includes conflicting information regarding the place of birth for the applicant and his parents, the applicant has not established that 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. The applicant has not met his burden of proof. The decision of the District Director to deny the application for adjustment of status under the Cuban Adjustment Act is affirmed.

ORDER: The decision of the District Director is affirmed.