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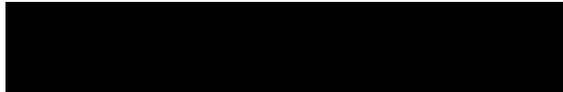
Office: MIAMI, FL
(WEST PALM BEACH)

Date: SEP 04 2008

Relates)

IN RE:

Applicant:



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:



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 application was denied by the Acting District Director, Miami, Florida who certified the decision to the Administrative Appeals Office (AAO) for review. The Acting District Director's decision will be affirmed.

The applicant is a native and citizen of Cuba 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.

The Acting District Director found the applicant inadmissible to the United States because she falls within the purview of section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having attempted to procure admission into the United States by fraud or willful misrepresentation. The Acting District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See Acting District Director's Decision*, dated August 4, 2006.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
- (ii) Falsely claiming citizenship.—
 - (I) In general.—Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible
 - (II) Exception—In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i)

of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The AAO notes that while aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver, provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford those aliens who made false claims to U.S. citizenship prior to September 30, 1996, the opportunity to apply for a waiver. *Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service*, dated April 8, 1998 at 3.

The record reflects that the applicant admitted in a sworn statement taken during a secondary inspection at the Ysleta Port of Entry in El Paso, Texas to attempting to enter the United States on June 30, 2001 by declaring that she was a United States citizen. *Form I-831, Record of Sworn Statement*, dated June 30, 2001; *Form I-213, Record of Deportable/Inadmissible Alien*, dated June 30, 2001. The applicant was subsequently ordered removed from the United States and prohibited from entering, attempting to enter, or being in the United States for a period of five years from the date of her departure. *Form I-296, Notice to Alien Ordered Removed/Departure Verified*, dated June 30, 2001. The AAO acknowledges counsel's assertion that the applicant denies making a false claim to United States citizenship (*See attorney's cover letter*, dated January 30, 2008). However, the AAO finds that the record supports the Acting District Director's conclusion that the applicant did falsely claim to be a United States citizen on June 30, 2001. Based on the record, the AAO finds that the applicant committed a misrepresentation and is therefore inadmissible under section 212(a)(6)(C) of the Act. As the applicant falsely claimed to be a United States citizen after September 30, 1996, she is not eligible for a waiver of this misrepresentation and the record fails to demonstrate that she qualifies for the exception as described in section 212(a)(6)(C)(ii)(II). The applicant is, therefore, ineligible for adjustment of status to permanent residence, pursuant to Section 1 of the CAA of November 2, 1966.

An applicant must demonstrate by a preponderance of the evidence that he or she 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 her burden of proof in this particular case. The decision of the Acting District Director to deny the application will be affirmed.

ORDER: The Acting District Director's decision is affirmed.