



U.S. Citizenship
and Immigration
Services

A 2

FILE:

Office: ORLANDO FIELD OFFICE

Date: MAR 03 2009

IN RE:

Applicant:

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Field Office 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 director will be affirmed.

The applicant claims to be a native and citizen of Cuba who was admitted to the United States on May 15, 2001 as a B-2 visitor.¹ In April 2007, the applicant submitted an application to register permanent residence or adjust status (Form I-485) pursuant to section 1 of Pub. L. 89-732 (November 2, 1966) as amended (Cuban Refugee Act of November 2, 1966) (1966 Act).

The director denied the application to adjust status, finding that the applicant provided a fraudulent Cuban birth certificate to establish his eligibility under the 1966 Act. The director certified his decision to the AAO for review on June 3, 2008. The director informed the applicant that he had 30 days to provide a brief or other written statement for consideration by the AAO. As of this date, the applicant has not submitted any evidence. The record is, therefore, considered complete.

Section 1 of the 1966 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 as of a date thirty months prior to the filing of such an application or the date of his last arrival into the United States, whichever is later. Pub. L. 89-732 (November 2, 1966) as amended.

In his notice of certification, the director informed the applicant that the birth certificate he submitted was fraudulent because the registry where the applicant's birth was allegedly registered in 1971 did not exist until 1980. As the applicant has not provided any evidence to dispute the director's findings, the AAO must affirm the decision to deny the I-485 application and further conclude that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act) as a person who has attempted or conspired to obtain an immigration benefit through fraud.

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 he is eligible for adjustment of status. The applicant has not met his burden and the director's decision will be affirmed.

ORDER: The director's decision is affirmed.

¹ On his I-94, Arrival and Departure card, a copy of which the applicant provided, the applicant listed his country of citizenship as Venezuela. The applicant claims that his passport was stolen; however, it is not clear to the AAO how the applicant would have a copy of his I-94 card, which usually remains in a passport, if his passport were indeed stolen.