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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**

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FILE:

[REDACTED]

Office: NEWARK, NEW JERSEY

Date:

MSC 09 181 13377

APR 08 2010

IN RE:

Applicant:

[REDACTED]

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:

[REDACTED]

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Newark, New Jersey Field Office Director, who certified her 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 The field office director's decision will be withdrawn and the matter remanded to the field office director for further processing of the application.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 native of Bolivia 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 filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on March 27, 2009 seeking to adjust her status pursuant to section 1 of the CAA. The record includes pages from the applicant's Bolivian passport showing she was admitted into the United States on December 14, 2003 on a B-1/B-2 visa. The applicant's I-94 card in the record confirms her admission and reflects that she is a citizen of Bolivia. In support of the Form I-485 application, the applicant provided a photocopy of her mother's birth certificate and translation showing that her mother was born on June 30, 1948 to "naturals" of Camaguey and that her mother's birth was registered on July 10, 1948 in the Ciego De Avila municipality and province. The record also included the applicant's registration of her civil status birth certification at the General Consulate of the Republic of Cuba in Santa Cruz, Bolivia on August 27, 2009. The August 27, 2009 registration of civil status identified the applicant's mother as a citizen of Cuba.

The field office director denied the application to adjust status, referencing *Matter of Buschini*, USCIS Adopted Decision 06-0004 (AAO, June 30, 2006). The field office director found that the applicant had not established that she was a citizen of Cuba and was, therefore, ineligible to adjust status under the 1966 Act.

On certification, counsel for the applicant asserts that *Matter of Vazquez*, USCIS Adopted Decision (AAO July 31, 2007) overruled *Matter of Buschini*. In *Matter of Vazquez*, the AAO determined that Article 20(c) of the Cuban Constitution provides citizenship to an individual born outside of Cuba to at least one Cuban parent, provided that he or she complies with the formalities of law. The legal formalities referenced in Article 29(c) are satisfied by the registration of an individual's birth at a Cuban consulate with jurisdiction over the country in which the individual is born; no residence in Cuba is required. The applicant has submitted a Cuban birth certificate issued by the Cuban consulate with jurisdiction over the applicant's birth and pursuant to *Matter of Vazquez* this is sufficient to establish the applicant's Cuban citizenship.

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. Nor did the field office director address whether the applicant merits a favorable exercise of discretion. Thus, the matter must be remanded for the director to address these 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.