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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

A2



FILE: MSC 09 181 13379 Office: NEWARK, NEW JERSEY Date:

APR 08 2010

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.

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 The field office director's decision will be withdrawn and the matter remanded to the field office director for further processing of the application.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 as the minor child of an individual eligible to file a Form I-485, Application to Register Permanent Residence or Adjust Status, 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 her discretion and under such regulations as she 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 provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

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. The record included the applicant's Form I-94 card showing the applicant was admitted into the United States on December 14, 2003. The record also included the applicant's birth certificate showing he was born in Santa Cruz, Bolivia and is the derivative beneficiary of an individual who had filed an application for adjustment of status pursuant to section 1 of the CAA. The field office director denied the application to adjust status, as the applicant had applied as a derivative beneficiary based on his mother's Cuban citizenship and his mother had not established that she was a citizen of Cuba. The field office director determined that the applicant in this matter was therefore also ineligible to adjust status under the 1966 Act.

In a separate decision, the AAO found that the applicant's mother had established her Cuban citizenship, withdrew the field office director's contrary decision, and found that the applicant's mother thus was eligible to apply for adjustment of status pursuant to section 1 of the CAA. As the applicant in this matter has established that he is the child of a Cuban citizen he also is eligible to apply for adjustment of status under section 1 of the CAA. 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 he 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.