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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 08 051 20101

Office: NEWARK FIELD OFFICE

Date:

FEB 24 2010

IN RE:

Applicant:

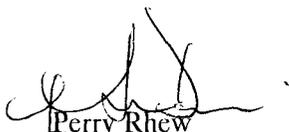
APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

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.

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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Newark, New Jersey, who certified her decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The application will be denied.

The applicant claims to a native and citizen of Cuba. He 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 states that he entered the United States at Key West (Florida) on June 5, 1980. He filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on or about November 19, 2007. He states on the Form I-485 that his last arrival in the United States was August 20, 2980. On July 11, 2008, the Director, Lees' Summit, Missouri, denied the application determining that the applicant had not responded to a December 26, 2007 request for evidence and thus the application must be denied. On July 15, 2008, upon a second review of the application and supporting documentation the director reopened the matter on a service motion to reopen and reconsider. The applicant was interviewed regarding his application on October 20, 2008. The record includes an October 23, 2008 letter from the applicant's counsel to the Consular Office of Cuba, Embassy of Switzerland, Cuban Interest Section, along with a money order, requesting the applicant's Cuban birth certificate. Upon review of the evidence in the file, including the applicant's solicitation for a birth certificate, the field office director denied the application on July 15, 2009. The field office director determined that the applicant had failed to provide any primary or secondary evidence of Cuban nationality. The field office director certified her decision to the AAO also on July 15, 2009.

Neither the applicant nor his counsel has provided additional evidence of the applicant's country of birth in response to the Notice of Certification. Thus, the record is considered complete.

As the applicant has failed to provide evidence that he is a native or citizen of Cuba, the application must be denied. The record does not include any consistent or probative supporting documentation to establish that the applicant is a native or citizen of Cuba. 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. Accordingly, the AAO affirms the decision of the director to deny the applicant's application to adjust status pursuant to section 1 of the CAA.

ORDER: The director's decision is affirmed. The application is denied.