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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

A2



Date:

APR 12 2011

Office:



FILE:



IN RE:

Applicant:



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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Jerry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The application that is the subject of this certification was initially denied on June 4, 2005, as was a subsequent motion to reopen, and the matter was certified to the Administrative Appeals Office (AAO) for review. On August 17, 2007, the AAO withdrew the certified denial decision and remanded the matter for further processing of the application. On February 3, 2010, the Field Office Director, [REDACTED] denied the application and certified her decision to the AAO. The field office director's decision is withdrawn and the matter is again remanded for further processing of the application.

The applicant is a native of [REDACTED] who was admitted to the United States on September 28, 2002 on a [REDACTED] passport as a B-2 visitor with authorization to remain in the United States until March 22, 2003. On August 9, 2004, he submitted an application to adjust status to that of lawful permanent resident pursuant to section 1 of Pub. L. 89-732 (November 2, 1966) as amended, the [REDACTED] Adjustment Act (1966 Act).

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 [REDACTED] 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

For the purposes of adjustment under the 1966 Act, the record establishes that the applicant was admitted to the United States as a B-2 visitor on September 28, 2002 and that he was physically present in the United States for at least one year prior to filing the Form I-485 and that he appears admissible. The only issue before the AAO is whether the record demonstrates that the applicant is a native or citizen of [REDACTED]

The applicant was born in [REDACTED] on February 24, 1974 and is, therefore, not a [REDACTED] native. The applicant's mother is a native and citizen of [REDACTED]. The applicant claims his father is a native of [REDACTED]. The applicant's claim to [REDACTED] citizenship is through his father. In order to establish eligibility under the [REDACTED] Adjustment Act, the applicant must demonstrate that he is a [REDACTED] citizen. In a decision adopted as binding policy on officers of United States Citizenship and Immigration Services (USCIS), the AAO found:

Individuals born outside [REDACTED] whose [REDACTED] citizenship is not documented with a [REDACTED] passport, may establish [REDACTED] citizenship for the purposes of adjustment under the [REDACTED] Adjustment Act through the submission of a [REDACTED] birth certificate issued by the Civil Registry of [REDACTED] in [REDACTED] or a [REDACTED] consular certificate

documenting their birth to at least one [REDACTED] parent within the consular district served by the consulate.

Matter of [REDACTED], USCIS Adopted Decision 07-000? (AAO, July 31, 2007).

In this matter, the applicant has submitted a photocopy of his [REDACTED] birth certificate showing his father was a native of [REDACTED] a photocopy of his father's birth certificate showing his father was born in [REDACTED] and his father's birth was registered in [REDACTED] and a photocopy of a [REDACTED] Civil Status Registry Birth Certificate issued on April 4, 2007 confirming the applicant's birth registration on August 7, 2004 in the [REDACTED] Civil Registry Office. The applicant's birth certificate issued by the Civil Registry of [REDACTED] was obtained upon the declaration of the applicant's mother.

In the field office director's February 3, 2010 decision, the field office director disagrees with the AAO's determinations in *Matter of [REDACTED]*, stating that in addition to the documentary requirements noted in *Matter of [REDACTED]*, an applicant must also submit evidence to show that he or she resided in [REDACTED]. The field office director references a Consular Certificate, issued by the General Consulate of the [REDACTED] in [REDACTED] and a website maintained by the [REDACTED] in support of her contention that a child born outside of [REDACTED] must reside in [REDACTED] in order to obtain [REDACTED] citizenship.

On certification, counsel asserts that the referenced consular certificate was in existence when the decision in *Matter of [REDACTED]* was rendered and that the website is informational only. Counsel contends that the field office director has not provided any [REDACTED] law or regulation that requires a child born outside of [REDACTED] to a [REDACTED] citizen to reside in [REDACTED] in order to obtain [REDACTED] citizenship.

As noted in *Matter of [REDACTED]*, the AAO issues decisions in a manner consistent with its best understanding of the law at the time that a decision is made. Upon review of the information provided by the field office director in her February 3, 2010 decision, she has not provided evidence of a [REDACTED] law or regulation that invalidates the reasoning set out in *Matter of [REDACTED]*. The AAO reiterates that an individual born outside [REDACTED] whose birth has been registered with a [REDACTED] consulate has complied with the legal formalities of section 29(c) of the [REDACTED] Constitution and is a citizen of [REDACTED] for the purposes of adjustment under the 1966 Act. Proof of that [REDACTED] citizenship can be provided by a birth certificate issued by the [REDACTED] Civil Registry in [REDACTED]. Like a [REDACTED] passport, the Civil Registry certificate in and of itself establishes [REDACTED] citizenship. Accordingly, we do not find merit to the director's conclusions regarding any inaccuracies in *Matter of [REDACTED]* and are withdrawing her decision in this matter, noting that *Matter of [REDACTED]* is an adopted decision that is binding on the director in her administration of the immigration laws. Nevertheless, based upon the record before the AAO at the present time, the applicant has not established his eligibility for adjustment of status under section 1 of the 1966 Act.

The only documents that the applicant submitted to establish his [REDACTED] citizenship were a photocopy of his [REDACTED] birth certificate and summary translation, a photocopy of his

father's birth certificate and summary translation, and a photocopy of his Civil Status Registry Birth Certificate and translation. The record does not include complete translations, the supporting documentation used to obtain the applicant's birth registration with the Civil Registry, or originals of the documents submitted. Thus, the matter is remanded for the director to determine the weight to be given the submitted documents and to enter a new decision into the record. The director may request any additional evidence she deems necessary to assist in her determinations. As always, the burden of proof remains with the applicant. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's certification is withdrawn. The matter is remanded to the director for entry of a new, detailed decision, which if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.