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

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U.S. Citizenship and Immigration Services

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[redacted]

DATE: JUN 17 2011 Office: NEW ORLEANS FIELD OFFICE FILE: [redacted]
MSC [redacted]

IN RE: Applicant: [redacted]

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:

[redacted]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, New Orleans, Louisiana, denied the application to adjust status and affirmed the denial on a subsequently filed motion to reopen and reconsider the matter. The field office director certified his decision to the Administrative Appeals Office (AAO) for review. The field office director's decision is affirmed. The application remains denied.

The applicant is a native and citizen of Cuba 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 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.

Section 212(a)(6)(C) of the Act in pertinent part states:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Pertinent Facts and Procedural History

The applicant applied for admission to the United States on four different days in [redacted] each time he was denied admission. On or about [redacted] applicant again applied for admission to the United States and this time used an altered identification card of another individual and was allowed to enter the United States. The applicant was paroled into the United States on [redacted] under a false name pending a hearing under section 240 of the Act. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on [redacted] using his real name. On [redacted] he was scheduled for an interview on his Form I-485 application. At the interview the applicant indicated that he had left Cuba in a small boat heading to Mexico and that the envelope with all the identification documents for the individuals leaving Cuba fell into the water. The applicant noted that he was able to rescue some of the identification documents. When he attempted to enter the United States he did not have photo identification showing that he was a Cuban citizen and thus was turned away. The applicant then arranged to have his photograph placed on another individual's Cuban identification document.

In his initial denial decision, dated [redacted] the director noted that after the applicant's entry into the United States, he continued to claim to be a different person when interviewed by Customs and Border Protection Officer and was paroled into the United States using the other individual's name. The director determined that section 212(a) of the Act makes any alien found to have misrepresented a material fact in order to procure any benefit under the Act inadmissible to the United States, and therefore ineligible for adjustment of status to that of a permanent resident under section 1 of the CAA.

On the motion to reopen and reconsider, the field office director affirmed his previous decision and also found that the applicant was ineligible for a waiver of inadmissibility under section 212(i) of the Act.

On certification, counsel for the applicant asserts that the field office director erred in finding the applicant to be inadmissible under section 212(a)(6)(C) of the Act, as the applicant had not made a material misrepresentation. Counsel asserts, in the alternative, that the field office director erred in finding that the inadmissibility ground could not be waived, as the applicant is eligible for a waiver under a humanitarian purpose, family unity, or public interest standard.

Analysis and Conclusion

The field office director in this matter determined that the applicant was inadmissible under section 212(a)(6)(C)(i) because he misrepresented his identity using an acknowledged altered document. The applicant thus procured his entry into the United States by misrepresenting a material fact. Counsel asserts that the applicant's misrepresentation was not material as he is a Cuban citizen as shown by his Cuban birth certificate. We disagree. The applicant sought entry into the United States on several different occasions and was not allowed entry. Only when he altered a Cuban identification document by placing his photograph on the identification was he allowed to enter the United States. This is a material misrepresentation; but for the misrepresentation, the applicant would not have been allowed entry.

The applicant has not demonstrated that he is eligible for a waiver of the material misrepresentation. Counsel avers that because the applicant is applying to adjust his status under the Cuban Refugee Act, any inadmissibility waiver should be considered under section 209(c) of the Act instead of section 212(c) of the Act. Counsel contends that the CAA was enacted as a humanitarian measure to protect refugees; thus requiring the applicant to have a qualifying relative for a waiver under section 212(i) of the Act ignores the reality of those seeking protection as Cuban refugees. Counsel filed a Form I-602, Application by Refugee for Waiver of Grounds of Excludability, on the applicant's behalf; however, a Form I-602 may only be filed by an applicant who is a refugee or asylee who was admitted under section 207 or 208 of the Act. The applicant was not admitted under either of those sections; thus, the Form I-602 is inapplicable in this matter. An alien seeking to adjust status under the CAA must file a Form I-601, Application for Waiver of Grounds of Inadmissibility. Section 212(i) of the Act provides for the Secretary of Homeland Security to exercise discretion in waiving the application of section 212(a)(6)(C)(i) of the Act for those aliens who have a qualifying relative and establish

extreme hardship to the qualifying relative if the waiver is not granted. In this matter, the applicant does not have a qualifying relative and thus he is not eligible for a waiver.

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. Here, that burden has not been met.

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