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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**

PUBLIC COPY

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FILE:



Office: ORLANDO FIELD OFFICE

Date: **MAR 31 2011**

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 PETITIONER:



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, Orlando, Florida, denied the application to adjust status and certified her decision to the Administrative Appeals Office (AAO) for review. The AAO affirmed the director's decision. The AAO subsequently granted a motion to reopen and a motion to reconsider the matter and again affirmed the director's decision. The matter is now before the AAO on a second motion to reconsider the prior decision. The motion will be granted, and the AAO's decision is affirmed. The application remains denied.

The applicant is a native and citizen of Venezuela 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 applicant is seeking classification as the spouse of a Cuban citizen who has been granted lawful permanent residence classification pursuant to section 1 of the CAA. The CAA provides, in pertinent 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.

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

A review of the record reveals the following facts and procedural history: The applicant indicated on the Form I-485, Application to Register Permanent Residence or Adjust Status, that she last entered the United States in B-2 status on March 15, 2002. A copy of her Form I-94 confirming the entry is attached to the Form I-485. On September 1, 2007, the applicant completed a Form I-9, Employment Eligibility Verification. On this form, the applicant attested, under the penalty of perjury, that she was a citizen or national of the United States. The applicant signed the Form I-9, which provides: "I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form." On May 30, 2008 in Ocoee, Florida, the applicant married Lazaro Sosa, a native and citizen of Cuba, who on August 17, 1995 became a lawful permanent resident pursuant to section 1 of the CAA. The applicant filed the Form I-485, on June 13, 2008 as the spouse of a Cuban citizen who had adjusted status under section 1 of the CAA.

In the January 9, 2009 notice of certification, the field office director informed the applicant that she was inadmissible to the United States under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act) for making a false claim to U.S. citizenship on the Form I-9 that she had completed on September 1, 2007. The director denied the application and certified her decision to the AAO for review.

On certification, counsel for the applicant submitted an affidavit signed by the applicant and translated on February 4, 2009 wherein the applicant declared: that she did not make a false claim to U.S. citizenship; that she remembers checking a box on the Form I-9 but did not know that it was regarding citizenship or nationality of the United States; that she barely speaks and reads English; and that her employer did not provide her instructions on how to fill out the Form I-9, so she used another Form I-9 as a template to complete her form. The petitioner declared further: that as she does not completely understand the English language, she accidentally signed the Form I-9 twice; that her employer contacted her and told her she needed to sign a new form, which she did following his instructions; and that she returned the new signed form back to him via facsimile. The applicant declared: “[t]he information on the form was due to ignorance, error or oversight and it was not done with the intention to claim to U.S. citizenship.” Counsel asserts that the applicant’s mistake in signing her name twice on the Form I-9 demonstrates that the applicant misunderstood the information requested on the Form I-9 due to the existence of a language barrier and that the applicant attempted to rectify her error by completing and sending a second corrected Form I-9 to her employer. Counsel contends that the applicant did not intentionally make a false claim to U.S. citizenship.

In the instant motion to reconsider, counsel for the applicant cites *Matter of Guadarrama*, 24 I&N Dec. 625, 628 (BIA 2008) for the proposition that in determining inadmissibility under section 212(a)(6)(C)(ii) of the Act, a case-by-case analysis may be required. Counsel again asserts that the applicant’s failure to understand the English language well enough to fill out the Form I-9, as evidenced by her signing incorrect portions of the Form I-9, is sufficient to show that she had no intention of making a false claim of U.S. citizenship when she filled out the Form I-9. Counsel contends that it is only logical that one cannot willingly intend to make a false claim of something she does not understand.

As the AAO previously determined, the applicant signed the Form I-9 under penalty of perjury. The record does not include evidence that the applicant attempted to rectify the claimed mistake on the Form I-9; rather, the record shows that the applicant was employed and continued her employment with the private employer who required the Form I-9 for employment purposes. Moreover, the AAO again points out that an alien who makes a false claim to U.S. citizenship and the false claim was made on or after September 30, 1996 to procure any immigration benefit under the Act or any other type of benefit under federal or state law, is inadmissible under section 212(a)(6)(C)(ii)(I) of the Act.

The applicant in this matter has not demonstrated her lack of intent when checking the box on the Form I-9 declaring that she was a U.S. citizen. The record does not include evidence demonstrating that the applicant lacked knowledge of the purpose and use of the Form I-9;

rather, she understood that the form must be filled out in order to be employed in the United States. Her claim of ignorance, error or oversight in filling out the Form I-9 does not overcome the fact that she claimed U.S. citizenship and was employed as a result.

In this matter, the applicant is inadmissible under section 212(a)(6)(C)(ii)(I) of the Act. Upon review, there is insufficient evidence in the record to demonstrate that the applicant's false claim to U.S. citizenship was innocent error. 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. The applicant has not met her burden. Accordingly, the AAO's decision is affirmed.

ORDER: The motion is granted. The AAO's November 22, 2010 decision is affirmed, and the application remains denied.