

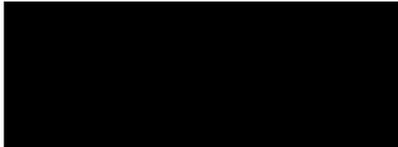
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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MAY 23 2011

Office: NEW ORLEANS, LA

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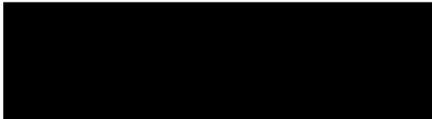
IN RE:

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, New Orleans, Louisiana, denied the application to adjust status and certified his decision to the Administrative Appeals Office (AAO) for review. The director's decision will be 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 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.

Pertinent Facts and Procedural History

The applicant first entered the United States on or about July 30, 1962 as an F-1 student at the age of 12. He resided in Pueblo, Colorado and attended school at the Sacred Heart Home, with the help of the Roman Catholic Archdiocese of Miami. The record includes the applicant's Form I-20A, Certificate of Eligibility, indicating that his date of birth is November 27, 1950 and that he was born in Havana, Cuba. On or about February 17, 1966, the principal of the [REDACTED] notified legacy Immigration and Naturalization Services (INS) with a Form I-20B, Notice and Report, that the applicant was no longer attending the school and that the applicant and his siblings had been reunited with their mother in New Orleans, Louisiana. The record also includes:

- An October 11, 1962 letter from the Acting District Director, Denver, Colorado providing a list of Cuban aliens who had been granted political asylum in the United States. The applicant's name is on the list;
- An October 11, 1962 letter from the Acting District Director, Denver, Colorado notifying the Sacred Heart Home of records that had been received from the Miami Office of legacy INS regarding Cuban children enrolled in the school and indicating that if there were any problems with the Cuban children that the legacy INS office should be notified. The applicant's name is on the list; and
- A copy of a Form SE-180 completed and signed by the applicant on February 21, 1966 wherein the applicant states that he is in the United States as a refugee.

The applicant filed the instant Form I-485, Application to Register Permanent Residence or Adjust Status, on January 9, 2009. On September 19, 2009, the applicant was interviewed by a United States Citizenship and Immigration Services (USCIS) officer. In a November 23, 2009

response to the field office director's request for further evidence, including a copy of the applicant's birth certificate, counsel for the applicant noted that the applicant had requested copies of his Cuban birth certificate and was waiting for them to arrive. On August 10, 2010, the field office director observed that USCIS had not received the applicant's Cuban birth certificate and determined that the applicant had not established eligibility under section 1 of the CAA. The director certified his decision to the AAO for review. The director informed the applicant that he had 30 days to supplement the record with any evidence that he wished the AAO to consider.

On certification, counsel for the applicant submits a brief and additional documentation. Counsel notes that the applicant contacted the Archdiocese and the Cuban Embassy in Mexico to obtain his birth certificate from Cuba. Counsel indicates that the information provided by the Archdiocese did not include the applicant's birth certificate in the information sent in response to the request. Counsel also indicates that the applicant did not receive an adequate response from the Cuban Embassy in Mexico and so contacted a private company to obtain his birth certificate from inside Cuba; however, the company took his money and did not return his calls. Counsel includes the following additional information to assist in establishing the applicant is a Cuban native and citizen:

- Copies of the applicant's two sisters' naturalization certificate;
- A copy of one of the applicant's sister's parolee document;
- A copy of one of the applicant's sister's Cuban birth certificate; and
- A second copy of the October 11, 1962 letter from the Acting District Director, Denver, Colorado notifying the [REDACTED] of records that had been received from the Miami Office of legacy INS regarding Cuban children enrolled in the school and indicating that if there were any problems with the Cuban children that the legacy INS office should be notified. Counsel noted that the applicant and his two sisters were on the list.

Counsel asserts that based on the totality of the circumstances and the information and evidence provided the applicant has established he is a Cuban citizen and thus eligible for residency under section 1 of the CAA. Counsel quotes *Matter of Buschini*, USCIS Adopted Decision 06-0004 (AAO, June 30, 2006), in support of her assertion. Counsel notes that pursuant to *Matter of Buschini* claims to Cuban citizenship will be evaluated based upon all available evidence and an alien should be afforded an opportunity to explain why certain documents that would establish citizenship are unavailable.

Analysis and Conclusion

Upon review of the totality of the evidence in the record, the applicant has not established eligibility to adjust his status under section 1 of the CAA. Upon review of the totality of the evidence in the record, including the documentation submitted on certification showing that the applicant's sisters have naturalized, the applicant has not submitted proof of his Cuban citizenship in the form of a birth certificate issued by the Cuban Civil Registry in Havana. Like a Cuban passport, the Civil Registry certificate in and of itself establishes Cuban citizenship. See *Matter of Vazquez*, USCIS

Adopted Decision 07-000 (AAO, July 31, 2007). Moreover, the applicant in this matter has not provided an adequate explanation regarding his inability to obtain his Cuban birth certificate. Counsel has not proffered evidence in the form of letters and responses demonstrating that the applicant has been unable to receive confirmation of his Cuban citizenship from the Cuban Civil Registry in Havana.

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 remains denied.