



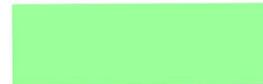
U.S. Citizenship
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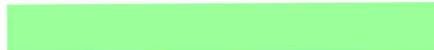
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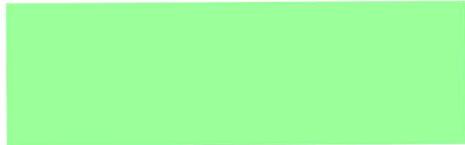
JUN 17 2013

IN RE: Applicant:



APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Refugee
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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron M. Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director (the director), Washington, District, denied the application to adjust status, and certified her decision to the Administrative Appeals Office (AAO) for review. The decision of the director will be affirmed.

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 Refugee Adjustment Act (CAA). Pub. Law No. 89-732 (Nov. 2, 1966).

The director denied the application, determining that the applicant's continued membership in the Cuban Communist Party (CCP) since 1993 rendered her inadmissible to the United States pursuant to section 212(a)(3)(D)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(3)(D)(i). On certification, counsel submits a brief and country condition information on Cuba. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Applicable Law

Section 1 of 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,¹ 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.

Section 212(a)(3) of the Act prescribes the following ground of inadmissibility:

(D) Immigrant Membership in Totalitarian Party

- (i) In General - Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.
- (ii) Exception for Involuntary Membership - Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the [Secretary of Homeland Security] when applying for admission) that the membership or affiliation is or was involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining

¹ Such authority has since been delegated to the Secretary of the Department of Homeland Security and U.S. Citizenship and Immigration Services (USCIS) pursuant to section 103 of the Act, 8 U.S.C. § 1103.

employment, food rations, or other essentials of living and whether necessary for such purposes.

- (iii) Exception for Past Membership - Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the [Secretary of Homeland Security] when applying for admission) that –

(I) the membership or affiliation terminated at least—

(aa) 2 years before the date of such application, or

(bb) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date, and

(II) the alien is not a threat to the security of the United States.

Pertinent Facts and Procedural History

The applicant is a native and citizen of Cuba who was last admitted to the United States as a G-4 nonimmigrant on August 30, 2010, with authorization to remain in the United States for the duration of status. On August 15, 2011, the applicant filed a Form I-485, Application to Adjust Status. On February 14, 2012, the applicant was interviewed by a United States Citizenship and Immigration Services (USCIS) officer and on July 13, 2012, the director denied the application and certified her decision to the AAO for review.

The director in this matter determined that the applicant voluntarily joined the Cuban Communist Party (CCP) in order to further her career. The director also determined that the applicant's membership was more than nominal as she participated in activities on behalf of the Communist Party.

On certification, counsel asserts that the applicant's membership in the CCP was involuntary and only to obtain and maintain her employment and other essentials of living; thus, the applicant falls within the exception at section 212(a)(3)(D)(ii) of the Act. Counsel also contends that even if the applicant's membership was voluntary, she had no meaningful association with the Communist Party because she did not attend any party functions or advocate for the communist party and would "gladly give up her membership in the party in order to obtain residence in the United States." Counsel further contends that the only reason the applicant joined the communist party was to keep her job and the only reason she continues to maintain her membership is so that she may obtain protection if she ever had to return to Cuba. Counsel argues that the applicant's membership falls within the additional exception created by the Congress and the Board of Immigration Appeals (BIA) in *Matter of Rusin*, 20 I&N 128, 131 (BIA 1989). As explained below, the facts and applicable law do not support counsel's claims.

Applicant's Statements regarding her Membership in the Cuban Communist Party.

On February 14, 2012, the applicant provided a Sworn Statement regarding her membership in the CCP. The applicant admitted to an immigration officer that she voluntarily joined the CCP in 1993 when she was 30 years old because "it is a must of the society in order to be taken care of. It is the party that rules the whole country." In response to the question of why she joined the communist party, the applicant stated that she had to "show good citizenship skills, good results at my place of work and at the society and this status will allow me to have better options and opportunities." In response to the question of whether her membership was voluntary, the applicant answered "Yes," because she wanted to be able to have access to better employment and opportunities and "carry a decent life and consideration in the society." And in response to the question of whether she joined the party to obtain employment, food rations, or housing, the applicant responded "No. I joined to be taking care of major decisions relative to the project I was leading at the time as senior information system engineer." The applicant indicated that her spouse, a Cuban national, who is currently working as an international employee at the [REDACTED] in the United States, is also a member of the CCP.

The record includes a January 25, 2011 statement from the applicant stating "I was proposed by my work's colleagues in [REDACTED] to integrate the Cuban Communist Party (which has a base organization in every work place), as a reward or recognition for the outstanding performance in the results of the work as was carrying out, the leadership in the project management that I was participating, and the discipline demonstrated at work as well as a good citizenship."

On certification, counsel asserts that the applicant did not voluntarily associate with the CCP. Counsel claims that the applicant was forced to join the CCP in order to maintain her employment, and to obtain other essential benefits, and that the applicant never attended any party functions or advocated for the communist party ideals. The applicant, however, stated at her interview on February 14, 2012, that she voluntarily joined the CCP, that she pays her dues and that she is currently an active member in the CCP so as to guarantee some protection for her children in the event she and her family have to return to Cuba. Counsel also asserts that the applicant's membership in the party did not meet the standard of the "meaningful association" test and was not voluntary as described under the Act. Counsel is of the opinion that applicant's situation is similar to that of the respondent in *Matter of Rusin*, supra.

The Applicant's Membership in the Cuban Communist Party was Voluntary

Contrary to counsel's assertions, the applicant stated at her adjustment interview that she voluntarily joined the CCP at the age of 30 years in order to have more control on the project that she was leading at the time. The record reflects that at the time the applicant joined the CCP, she had completed her education and was working as a senior information system engineer with [REDACTED]. The applicant indicated that her need to join the CCP was to be able to take part in "major decisions" as the Chief of a computer project she was working on at the time, to have better employment opportunities and "carry a decent life and consideration in the

society,” however, the applicant has not established that she joined the CCP for basic employment, food rations, or other essentials of living. The applicant testified under oath at her adjustment interview that she did not join the CCP to obtain employment, food rations, or housing. Thus, the applicant’s membership in CCP in 1993 at the age of 30 years does not fall within the “involuntary” exception at section 212(a)(3)(D)(ii) of the Act.

Counsel asserts that the applicant’s situation is similar to that of the respondent in *Matter of Rusin*, 20 I&N Dec. 128 (BIA 1989), where the Board of Immigration Appeals (BIA) found that the respondent’s prior membership in a Communist Organization in Poland known as “ZSL” was involuntary because she joined the party out of necessity for continued employment and was not active in any of the organization’s activities; her continued service was for the financial needs of her immediate family; she expressed no ideological sympathy with the Party and never held a position of political responsibility within the Party. Counsel claims that, like *Rusin*, the applicant joined the CCP “to have better options and opportunities” and that her “minimal involvement in the organization” to obtain life necessities rendered her membership involuntary. Counsel’s claim is not persuasive. The facts of the applicant’s case, as explicated in her Sworn Statement, are clearly distinguishable from those in *Rusin*. In *Rusin*, the respondent was required to join the organization in order to obtain and maintain her employment lest she would be fired. While the record in this case indicates that without her CCP membership, the applicant may not have taken part in the major decision process relating to the computer project she was working at the time or may not have advanced her career to the same degree, there is no indication that she faced similar circumstances of losing her employment as *Rusin* when she joined the CCP and continued to maintain her membership to the present.

The Applicant had a Meaningful Association with the Cuban Communist Party

In addition to the statutory exceptions,² the U.S. Supreme Court in 1954 determined that an alien’s membership in the Communist Party would mandate his or her deportation only where the alien knew that the Party was a distinct and active political organization. *Galvan v Press*, 347 U.S. 522 (1954). In 1957 the Court also determined that the statutorily enumerated exceptions were not to be construed narrowly and that if the alien’s membership was wholly devoid of any political implications, it would be insufficient to support an order of deportation under the statutory scheme then in effect. *Rowoldt v. Perfetto*, 355 U.S. 115 (1957). In 1963 the Court further elaborated on *Galvan* and *Rowoldt* by determining that the “meaningful” character of an alien’s association with the Communist Party could be demonstrated directly by showing that the alien “was, during the time of his membership, sensible to the Party’s nature as a political organization;” or “meaningful association” could be demonstrated indirectly by showing that the alien “engaged in Party activities to a degree substantially supporting an inference of his awareness of the Party’s political aspect.” *Gastelum-Quinones v. Kennedy*, 374 U.S. 469, 476-

² The 1951 corrective amendment to the 1950 Act provided that an alien who joined the Communist (or other totalitarian) Party, was not deportable if the alien joined: (1) as a child, (2) by operation of law, or (3) to obtain the necessities of life. Section 212(a)(28)(E), (I)(i) of the Act then in effect; 8 U.S.C.A. § 1182(a)(28)(E), (I)(i) (1951).

77 (1963). The meaningful association standard enunciated by the Supreme Court applies to adjustment of status proceedings. *Matter of Rusin*, 20 I&N Dec. 128 (BIA 1989).

By these standards, the applicant's membership in the CCP from 1993 to the present was meaningful. According to the applicant's testimony, she knew that the CCP was a political organization controlled by the Cuban government. In her February 14, 2012 Sworn statement, the applicant stated that she joined the CCP in 1993, because "it is a must of the society in order to be taking in care. It is the party that rules the whole society." The applicant's statements demonstrate that at the time she joined the CCP, she was fully aware of the political nature of the organization and the protections and benefits such association would bring her.

Counsel claims that the applicant's CCP membership was not meaningful, but passive, in that she never attended any party functions or advocated for communist party ideas, she did not commit herself to communism and would gladly give up her membership in order to obtain residence in the United States. Counsel asserts that the only reason the applicant joined the CCP was to keep her job and the only reason she continues to keep her membership is so that she may obtain protection if she ever had to return to Cuba. Counsel claims that the applicant's CCP membership is analogous to those found to lack meaningful association by the BIA in *Matter of Rusin*, 20 I&N Dec. 128 (BIA 1989), citing *Rowoldt v. Perfetto*, 355 U.S. 115 (1957). Counsel's argument is not persuasive as the facts of those cases are clearly distinguishable from the applicant's situation. In *Rowoldt*, the alien was a member of the Community Party for approximately one year and joined the Party because he believed the organization's aim was "to get something to eat for the people." 355 U.S. at 117. The alien testified that he worked at a Party bookstore, but was not compensated for his time. *Id.* In contrast, the applicant here was fully aware of the CCP's political nature when she joined the organization in 1993 and continues to maintain her membership to the present. The applicant's CCP membership was obtained primarily to have more control on the project she was leading and to advance her career. The record is clear that at the time the applicant joined the CCP in 1993, she was already a qualified Information Systems Engineer and she was heading a project.

The applicant's circumstances are also distinct from those in *Rusin*, where the respondent was a member of ZSL, which she assumed was a Union and not a communist party. The respondent's membership was a requirement for her to obtain and keep employment in her field, she would have been fired if she did not join, her wages were necessary to help support her family, she never attended meetings of the ZSL and her only involvement was joining the organization in order to keep her employment. *Id.* at 130. The BIA found that the respondent's membership in the ZSL was involuntary in that "it was required for her employment, and that she joined only for that reason." The BIA further found that, even if her membership were to be considered voluntary, she had no "meaningful association" with the Communist Party, citing for this holding the Supreme Court's *Rowoldt v. Perfetto*, 355 U.S. 115 (1957). *Id.* at 130. The applicant's situation is not analogous. As stated previously, at the time the applicant joined the CCP, she was a 30-year old woman who was gainfully employed at [REDACTED], as Chief of the computer project. She joined the CCP in order to "take part in 'major decisions' pertaining to the project she was leading at the time. While the applicant claims that her involvement in the

CCP was limited to “just a member of my place of work base organization,” and “a monthly payment according to your income,” her membership was gained not simply to obtain an education or other life necessities, but to further advance her career and to have access to better employment and opportunities, and to “carry a decent life and consideration in the society.” She states that she continues to “maintain her membership to the CCP: in order to guarantee some protection to my kids until I didn’t decide any other step.” The applicant’s Sworn Statement clearly evidences her knowledge of the political nature of the CCP and the meaningful association of her memberships in the party.

Conclusion

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 affirms the decision of the director to deny the application to adjust status under section 1 of the CAA.

ORDER: The decision of the director is affirmed. The application remains denied.