



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: Office: WASHINGTON

APR 01 2014

[Redacted]

IN RE: Applicant: [Redacted]

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 APPLICANT:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron M. Rosenberg  
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 AAO affirmed the director's decision to deny the adjustment of status application. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed, the previous decisions of the director and the AAO will be affirmed and 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 Refugee Adjustment Act (CAA). Pub. Law No. 89-732 (Nov. 2, 1966).

The director denied the application, finding that the applicant's continued membership in the Cuban Communist Party (CCP) 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). The director certified the decision to the AAO for review. Upon a *de novo* review of the record, the AAO concurred with the determination made by the director and affirmed the director's decision.<sup>1</sup> *Decision of the AAO*, dated June 17, 2013.

On July 18, 2013, counsel for the applicant submits a Form I-290B, Notice of Appeal or Motion requesting the AAO to reconsider its decision. In requesting the AAO to reconsider its decision, the applicant asserts that membership in CCP was not voluntary, and that she has not had any affiliation nor participated in any party activity related to the CCP in the United States and in Cuba since coming to the United States in May 2000. The applicant also asserts that she believes that her membership in CCP was terminated when she left her base organization in Cuba to come to the United States in 2000. The applicant claims that she went to the Cuban Consulate in Washington, D.C. to inquire about the status of her CCP membership being that she has been outside of Cuba for more than ten years, has not paid any dues and has not participated in any party activities for that period of time. She claims that she requested some documentation evidencing that her membership in the CCP has been terminated, but was unsuccessful in procuring such documentation. Counsel submits a brief, U.S. Department of State, Country Reports on Human Rights Practices in Cuba for 2011, and an additional statement from the applicant.

The procedural history in this case is well documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

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 U.S. Citizenship and Immigration (USCIS) policy. A motion to reconsider a decision on an application or petition must, when filed,

---

<sup>1</sup> The AAO reviews these proceedings *de novo*. AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. *See* 8 C.F.R. § 103.5(a)(2). *See also Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991). A motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the “additional legal argument” that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party. Also, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60. Furthermore, a motion to reconsider is not a process by which a party may submit documents, which were previously available and the applicant failed to submit them when requested to do so.

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,<sup>2</sup> 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)(D) 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

---

<sup>2</sup> 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.

In addition to the above statutory exceptions and as discussed below, longstanding case law provides that the immigration consequences flowing from membership in a communist or totalitarian party attach only if a “meaningful association” with that party existed. *See Gastelum-Quinones v. Kennedy*, 374 U.S. 469,471 (1963); *Rowoldt v. Perfetto*, 355 U.S. 115, 120 (1957); and *Galvan v. Press* 347 U.S. 522, 527-29 (1954); *see also Matter of Rusin*, 20 I&N Dec. 128, 130 (BIA 1989).

On motion, counsel claims that the applicant is not inadmissible to the United States because she did not voluntarily associate with the CCP. In support of such assertion, counsel claims that the applicant was “forced” to join the CCP to show good citizenship, maintain her employment and “have benefit under the law.” Counsel claims that the applicant’s membership was not meaningful because she never attended any party functions, did not advocate for communist party ideals and would “gladly give up her membership in the party in order to obtain residence in the United States.” Counsel contends 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. In support of this motion, counsel submits the applicant’s unsupported and contradictory statement.

The AAO has reviewed the evidence on motion and finds it insufficient to overcome the grounds of the applicant’s inadmissibility based on her membership in the CCP. As fully discussed in the AAO’s June 17, 2013 decision, the applicant stated under oath before an immigration official at her adjustment interview on January 25, 2011, that she voluntarily joined the CCP in Cuba in 1998 at the age of 30 so that she would be able to participate in major decisions pertaining to her work as a Chief Engineer in [REDACTED] – a Cuban government company. The applicant also testified at the same interview that she did not join the party to obtain food rations, employment or housing; rather, she joined to take care of major decisions relative to the project she was leading at the time as the senior information system engineer. Additionally, the applicant testified at the same interview that she was still a member of the CCP, that she wants to

hold on to her membership in order to “guarantee some protection to my kids.” In a 2012 statement the applicant submitted in support of her application, the applicant indicated that she is holding on to her CCP membership to protect herself and her child and will give up her membership only after obtaining permanent residence in the United States

On motion however, the applicant submitted a statement dated July 15, 2013 that contradicted her prior statements regarding her membership in the CCP. The applicant claimed that she had terminated her membership in the CCP when she left Cuba in 2000 because she had not had any affiliation with the party since her departure in 2000. The applicant states “In my application Form I-485, there is a blank entry regarding the date when my membership terminated because from my point of view I just finished or terminated my relationship or affiliation with the CCP organization in my work place back in Cuba . . .” In response to the question, “Have you **EVER** been a member of, or in any way affiliated with the Communist Party?”, the applicant changed her response from that given in 2011. The applicant states, “As I explained before, I was wrong. I am not a member, I **was** a member of the Cuban Communist Party since 1993 when I arrived to thirty years of age until May 2000 that my affiliation finished and I was released from my relationship with the CCP to travel to the USA.” It is noted that counsel submitted no independent documentation in support of said motion other than the applicant’s statement. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The contradictory statement also casts serious doubt on the credibility of the applicant and the reliability of the statement as evidence of the applicant’s eligibility for benefit under Section 1 of the CAA. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant’s evidence also reflects on the reliability of other evidence in the record. *See id.* Based on the evidence of record, the AAO finds that the applicant has failed to establish that she falls under the exception of Section 212(a)(3)(D)(iii) of the Act.

On motion, the applicant has failed to establish that she had no meaningful association with the CCP and, that the inadmissibility ground at section 212(a)(3)(D)(i) of the Act does not apply to her. On motion, counsel cited *Matter of Rusin* in support of the applicant’s motion, but did not provide any credible evidence to establish that the applicant is similarly situated as in *Matter of Rusin*. It is to be noted that the AAO has thoroughly discussed *Matter of Rusin* in the prior proceeding and found that unlike the applicant in *Rusin*, the applicant in this case had a meaningful association with the CCP.

In *Galvan*, the Supreme Court noted that Congress could not have intended the deportation of aliens who “accidentally, artificially, or unconsciously in appearance only” were members of the Communist Party, or where membership is so nominal as to not make him a “member” within

the terms of the Act. 347 U.S. at 527-29. See also *Matter of Hajdu*, 16 I&N Dec. 497, 500 (BIA 1978) (noting that the *Galvan* Court recognized that the alien's participation in the Communist Party may have been so nominal as to make it unfair to attribute the consequences of "membership" to him).

In *Rowoldt*, the Court held that membership in the Communist Party mandates deportation only where there is "a substantial basis for finding that an alien committed himself to the [ ] Party in consciousness that he was 'joining an organization known as the Communist Party which operates as a distinct and active political organization.'" 355 U.S. at 120 (quoting *Galvan*, 347 U.S. at 528). The *Rowoldt* Court explained that the statutory exceptions were not to be construed narrowly and, further, enunciated a "meaningful association" requirement. 355 U.S. at 120; see also *Gastelum-Quinones*, 374 U.S. at 474, 476-77. Later, the Supreme Court interpreted "membership" as meaning "more than the mere voluntary listing of a person's name on Party roll." *Gastelum-Quinones*, 374 U.S. at 474 (citing *Scales v. United States*, 367 U.S. 203, 222 (1961)). See also *Matter of Rusin*, 20 I&N at 131 (discussing the Supreme Court's "'meaningful association' requirement"). In this case, the evidence of record demonstrates that the applicant voluntarily joined the CCP, that she had a meaningful association with the CCP and that she has continued to maintain her membership in the CCP and is therefore inadmissible. Counsel has presented no credible evidence to overcome these findings.

In the instant matter, the applicant has provided no reasons for reconsideration that are supported by pertinent precedent decisions to establish that the AAO's prior decision was based on an incorrect application of law or USCIS policy. The applicant has also failed to provide pertinent precedent decisions or evidence to establish that the AAO's decision was incorrect based on the evidence of record at the time of the initial decision or established that the director or the AAO misinterpreted the evidence of record. The applicant in essence restated the same facts and argument made on certification regarding her membership in the CCP. The applicant has failed to submit credible and probative evidence to show that her membership in the CCP was involuntary and was to obtain life necessities. The applicant has also failed to establish that her membership or affiliation with the CCP has been terminated for at least 2 to 5 years from the date of her application to adjust status as required by the law. In its June 17, 2013, decision the AAO thoroughly discussed the reasons why the applicant is inadmissible to the United States due to her continued membership in the CCP. On motion, the applicant has failed to provide evidence to overcome the grounds for the AAO's decision. The applicant on motion has failed to adequately and fully address whether the AAO's decision was incorrect as a matter of law, precedent decision or USCIS Service policy. Therefore the motion shall be dismissed.

On motion, counsel requests in the alternative that, if the applicant is found to be inadmissible, that her dependent child, [REDACTED] is entitled to benefits under Public Law No. 89-732 in his own right. While the AAO cannot advise the applicant as to the eligibility of her son for adjustment of status under Section 1 of the CAA, as a dependent on his mother's application, a denial of the principal's application will result in the denial of the dependent's application. However, a denial of the principal's application does not preclude the dependent from pursuing benefits provided under the immigration laws of the United States on his own.<sup>3</sup>

---

<sup>3</sup> It is noted that counsel filed one Form I-290B, Notice of Appeal or Motion for the principal applicant

Furthermore, the motion shall be dismissed for failing to meet an applicable requirement. The regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the submission constituting the motion does not contain a statement as to whether or not the unfavorable decision has been or is the subject of any judicial proceeding as required by 8 C.F.R. § 103.5(a)(1)(iii)(C). Thus, the applicant failed to comply with this requirement for properly filing a motion. Accordingly, the motion must be dismissed for this reason also.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden.

The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion to reconsider does not meet the applicable filing requirements, it must be dismissed.

The motion to reconsider will be dismissed for the reasons stated above. The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The applicant has not met that burden. Accordingly, the motion will be dismissed, and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion to reconsider is dismissed and the decision of the AAO dated June 17, 2013 is affirmed. The application remains denied.

---

and none for the dependent. For each adverse decision, an applicant must submit a separate Form I-290B and associated fee. *See* 8 C.F.R. § 103.3(a)(1).