U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

MAR - 8 2001

FILE: [redacted] Office: Miami Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT:

[redacted]

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision 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 Adjustment Act of November 2, 1966. This statute provides for the adjustment of 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, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director determined that the applicant was inadmissible to the United States because she falls within the purview of sections 212(a)(6)(C)(i) and 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C)(i) and 1182(a)(6)(C)(ii). Because no waiver is available to aliens found inadmissible under section 212(a)(6)(C)(ii) of the Act, the district director further determined that no action will be taken on the I-601 waiver application.

In response to the notice of certification, counsel asserts that although the applicant had a U.S. citizenship document in her possession, she did not knowingly and intentionally turn over the false document to any immigration official, and she never told any officer that she was a United States citizen. Counsel further asserts that at the most, the applicant should have been charged in violation of section 212(a)(2)(C)(i) only, rather than section 212(a)(2)(C)(ii). She claims that the applicant is, therefore, entitled to a section 212(i) waiver as she never made a claim to U.S. citizenship.

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

> (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.
>
> (ii) Any alien who falsely represents, or has falsely represented, himself or herself to be citizen of the United States for any purpose or benefit under this Act (including section 274A [1324a]) or any other Federal or State law is inadmissible.

Counsel asserts that the applicant denies she intended to enter the United States with a false document. She further asserts that while the U.S. passport was presented to American Airlines to board the plane, there is no information to show that the document was ever presented to a U.S. Government official; therefore, the Service has not met its burden of showing that such violation occurred.

In a statement attached to the application for waiver (Form I-601) filed on February 2, 2000, the applicant states that she left Cuba with her son on April 27, 1996 for Costa Rica, and they lived there for three years. She further states that in October 19[redacted]8, her son left Costa Rica and came to the United States to be with his father; however, she was not able to obtain a U.S. visa as the consulate in Costa Rica denied her request on two occasions. She further states:

> I was contacted by telephone by a man I did not know. He did not give me a name. He offered to give me a travel document to come to the United States. He offered to give me a document to come here without cost to me. I took the document without knowing its ramifications. I was only thinking of joining my son.
>
> When I arrived in the United States, I had no intention of presenting this document to any U.S. Government official. I was going to present myself to INS and ask for help. When the plane arrived in Miami, Florida, an airport official was waiting at the point where people get off of the plane. The official asked me for a document. I told the officer that I did not have any documents to travel with. The officer then took my purse, and searched it. The officer found the passport. At no time did I ever hand over the U.S. Passport to the airport official.

This statement of the applicant, however, contradicts evidence contained in the Service record. A Service Memorandum dated January 31, 1999, contained in the record of proceeding, reflects that the applicant arrived at Miami International Airport on that date, on an American Airline flight from San Jose, Costa Rica. During a 100% airside document check, the applicant presented to the officer a United States passport issued to [redacted] The applicant was referred for secondary inspection at which time she stated that she was a Cuban national.

Additionally, in a sworn statement before an officer of the Service on January 31, 1999, the applicant claims that she left Cuba in October 1998 and entered Costa Rica using her Cuban passport with a tourist visa, and that she remained in San Jose for three months; however, she left her Cuban passport in Costa Rica. Because she

wanted to join her son and her lawful permanent resident spouse in the United States, the applicant states that an unknown person felt sorry for her and offered to help her come to the United States. The man gave her the U.S. passport the morning before she left San Jose. The applicant claims that she presented the U.S. passport to the authorities to board the airline to Miami. When asked by the Service officer during the interrogation, "What documents did you present today to the immigration inspector?" she replied, "a false document (U.S. Passport #[redacted]."

Neither the Service memorandum nor the sworn statement support the applicant's claims. The Service record does not reflect that the officer searched the applicant's purse at plane site, but rather, she presented the U.S. passport to the officer, and that she was subsequently referred for secondary inspection at which time she stated that she was a Cuban national.

The applicant falsely represented herself to be a citizen of the United States when she presented the U.S. passport to the airline official and to the Service officer to facilitate her entry into the United States.

Therefore, despite counsel's argument, it is concluded that the district director correctly found the applicant inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(6)(C)(ii) of the Act. There is no waiver available to an alien found inadmissible to the United States under section 212(a)(6)(C)(ii). Furthermore, pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant, not upon the Service as claimed by counsel, to establish that she is eligible for adjustment of status. The applicant has failed to meet that burden.

In view of the foregoing, the applicant is ineligible for adjustment of status to permanent resident pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.