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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

FILE: [redacted] Office: Miami Date: OCT 1 - 2003

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)

ON BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The AAO affirmed the decision of the acting district director to deny the application. The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the AAO will be withdrawn, and the case will be remanded to the acting district director for further action.

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 acting district director denied the application after determining that the applicant was not eligible for adjustment of status because her mother's application for permanent residence under section 1 of the CAA had been denied, based on her failure to establish that she is a citizen of Cuba.

Upon review of the record of proceeding available on certification, the AAO determined that although the applicant's mother [redacted] and Ms. [redacted] father presented themselves to the Cuban Consulate in Caracas, Venezuela, and Ms. [redacted] obtained a Cuban birth certificate, Venezuela did not recognize dual citizenship. The AAO further determined that there was no evidence to prove that Ms. [redacted] had expressly given up her right to Venezuelan citizenship, and that Ms. [redacted] in fact, holds a Venezuelan passport in which it is stated that she is a Venezuelan citizen. The AAO cited Article 29 of the Constitution of the Republic of Cuba that reads, in part:

> Those considered Cuban citizens by birth are:
>
> (c) those born outside of Cuba of Cuban father or mother, provided that they comply with the formalities of the law.

The AAO affirmed the acting district director's finding that Ms. [redacted] is a citizen of Venezuela and, therefore, she did not meet the requirements of section 1 of the CAA. Citing *Matter of Quijada-Coto*, 13 I&N Dec. 740 (BIA 1971), the AAO, on October 15, 2002, denied the application in the present case because the application of Ms. Olmo (the principal alien) had been denied.

On motion, counsel asserts that the case on which the AAO based its decision is no longer good Venezuelan law as the Venezuelan Constitution has since been amended regarding dual nationality. He submits a copy of the Venezuelan Constitution, amended in 1999, which states, in part:

> **Article 34:** The Venezuelan nationality is not lost upon electing or acquiring another nationality.

Based on the revised 1999 Venezuelan Constitution and evidence that Ms. [redacted] has complied with the formalities stipulated by Article 29 of the Cuban Constitution, the AAO withdrew its decision dated October 15, 2002, and remanded the case to the acting district director so that he may accord Ms. [redacted] the opportunity to establish that she had been physically present in the United States for one year prior to the filing of her adjustment application.

Accordingly, this case will be remanded for further action, and to await the final determination of the application of Ms. [redacted] the principal alien. The director shall enter a new decision which, if adverse to the applicant, is to be certified to the AAO for review.

ORDER: The AAO's decision dated October 15, 2002 is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.