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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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U.S. Department of Homeland Security

Immigration and Naturalization Service

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

FILE: [redacted] Office: Texas Service Center Date: SEP 17 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)

IN BEHALF OF APPLICANT: Self-represented

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 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 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 Director, Texas Service Center, who certified her decision to the AAO for review. The AAO affirmed the decision of the 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 The motion will be granted, the previous decision of the AAO will be withdrawn, and the application will be approved.

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.

The director denied the application based on abandonment after determining that the applicant failed to submit a police clearance letter under her correct date of birth. The director noted that the applicant's birth certificate shows that she was born on September 16, 1949, and the applicant reported her birth date as September 3, 1949.

Upon review of the record of proceeding, the AAO noted that the applicant has provided no statement or additional evidence on notice of certification. The AAO, therefore, affirmed the director's decision to deny the application based on abandonment on October 30, 2002.

The applicant appears to have legal counsel. In order to be recognized in these proceedings as the applicant's authorized representative, counsel must submit a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28). Since none has been provided, the applicant will be considered to be self-represented. In the interest of due process, however, the evidence submitted by counsel will be considered in this proceeding.

On motion, the applicant requests reconsideration based on two grounds:

1. The applicant did not abandon the application process, but was unaware that additional evidence had been requested since she had moved from the residence where she had resided during the application process. On February 3, 2000, she sent a notice stating that she had moved, and provided her address and telephone number. The applicant did not receive the request for additional information at her new residence. She submits a copy of the notice of change of address.

2. The irregularity of the applicant's birth certificate was due to an error committed by the Cuban authorities. The

application reflects her true birth date, September 3, 1949. The date of birth on the birth certificate, September 16, 1949, is incorrect. The applicant states that she has since obtained a new and correct birth certificate that reflects her correct date of birth. She further states that the Service officer who met with her changed her date of birth from September 3, 1949 to September 16, 1949 because the officer noticed that September 16 was the date on the applicant's birth certificate. The applicant submits a copy of the corrected birth certificate.

Documentation contained in the record of proceeding, including the application for adjustment of status, Form G-325A (Biographic Information), Form I-693 (Medical Examination) and record of immunization, and Service Form I-94 (Parole Edition), all reflect the applicant's date of birth of September 3, 1949. The applicant, on motion, submits a corrected birth certificate. The Service, therefore, accepts this date of birth.

The applicant submits another letter of clearance, under her correct date of birth of September 3, 1949, from the Miami-Dade Police Department, the county where the applicant has been residing, indicating that the applicant has no criminal record. As the only ground of ineligibility present in this case has now been overcome, it is, therefore, concluded that the applicant has established she is in fact eligible for adjustment of status to permanent residence, pursuant to section 1 of the Act of November 2, 1966, and warrants a favorable exercise of discretion. Accordingly, the director's decision will be withdrawn, and the application will be approved.

ORDER: The director's decision is withdrawn. The application is approved.