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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

[redacted]

FILE: [redacted] Office: Miami Date: SEP 30 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)

PUBLIC COPY

ON BEHALF OF APPLICANT:

[redacted]

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 The motion will be granted, the previous decision of the AAO will be withdrawn, and the case will be remanded to the acting district director for further action.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 his spouse'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 spouse [redacted] and Ms. [redacted] mother 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, therefore, affirmed the acting district director's finding that Ms. [redacted] was 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 30, 2002, denied the application in the

present case because the application of Ms. [redacted] (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 August 22, 2002, and approved Ms. [redacted] application.

Accordingly, based on the approval of the application of the applicant's spouse, the applicant is, therefore, not precluded from adjustment of status under section 1 of the CAA if the applicant was inspected and admitted into the United States subsequent to January 1, 1959, has been physically present in the United States for at least one year prior to the filing of the application, is eligible to receive an immigrant visa, and is admissible to the United States for permanent residence.

8 C.F.R. § 245.2(a)(2)(ii) provides, in part:

> An application for the benefits of section 1 of the Act of November 2, 1966 is not properly filed unless the applicant was inspected and admitted or paroled into the United States subsequent to January 1, 1959. An applicant is ineligible for the benefits of the Act of November 2, 1966 unless he or she has been physically present in the United States for one year.

The Form G-325A (Biographic Information), contained in the record of proceeding, shows that the applicant claimed to have been residing in Caracas, Venezuela, from September 1997 to February 2001, and that he was working for "Corp Banca" at Caracas, Venezuela, as "Manager of Broker Division" from February 1997 to February 2001. Additionally, the application for permanent residence (Form I-485) reflects that the applicant claimed to have last entered the United States on February 5,

2001. On March 20, 2001, approximately 44 days after his claimed entry, the applicant filed the application in this matter for adjustment of status under section 1 of the CAA.

It appears that the applicant was not physically present in the United States for one year at the time of filing the adjustment application as required. The acting district director, however, did not address the lack of the applicant's physical presence in the United States, nor is there evidence in the record that the applicant was requested to submit evidence to establish that he was physically present in the United States for one year prior to the filing of the application.

Accordingly, the case will be remanded so that the acting district director may accord the applicant an opportunity to submit additional evidence. 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 20, 2002 is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.