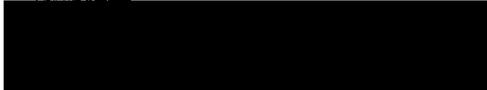


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U.S. Department of Homeland Security
Citizenship and Immigration Services

identifying data deleted to
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invasion of personal privacy

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



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)

ON BEHALF OF APPLICANT:



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 application will be approved.

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 under section 1 of the CAA because she failed 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 and her mother presented themselves to the Cuban Consulate in Caracas, Venezuela, and the applicant obtained a Cuban birth certificate, Venezuela did not recognize dual citizenship, and the record was devoid of evidence establishing that the applicant had expressly given up her right to Venezuelan citizenship. 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.

On August 22, 2002, the AAO affirmed the acting district director's finding that the applicant was a citizen of Venezuela and, therefore, did not meet the requirements of section 1 of the CAA.

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.

The applicant, in this case, claimed that that she is a Cuban citizen, pursuant to Article 29 of the Cuban Constitution, because one of her parent is Cuban, and she has complied with the formalities stipulated by Cuban law. She has submitted a birth certificate, issued by the Cuban government, to establish her claim.

Based on the revised 1999 Venezuelan Constitution, and evidence that the applicant has complied with the formalities stipulated by Article 29 of the Cuban Constitution, it is concluded that the applicant has established that she is a citizen of Cuba, she was inspected and admitted into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year. The applicant is, therefore, not precluded from adjustment of status under section 1 of the Cuban Adjustment Act of November 2, 1966. The director did not raise any other basis for denial, nor are there known grounds of inadmissibility.

Accordingly, the AAO's decision will be withdrawn, and the application will be approved.

ORDER: The AAO's decision dated August 22, 2002 is withdrawn. The application is approved.