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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

FILE: [redacted] Office: Texas Service Center Date: APR 22 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

[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 Bureau of Citizenship and Immigration Services (Bureau) 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 Administrative Appeals Office for review. The director's decision will be withdrawn, and the application will be approved.

The applicant is a native of Cuba and citizen of Spain 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. This Act provides, in pertinent part:

> [T]he 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, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The director determined that the applicant was not eligible for adjustment of status, pursuant to section 1 of the CAA, because her claim of citizenship at the time of entry into the United States was Spanish. The director stated that the Board, in *Matter of Ognibene*, 18 I&N Dec. 425 (BIA 1983), came to the conclusion that although an alien may hold the phenomenon of dual nationality, an alien may only claim one citizenship at a time for purposes of immigration matters within the United States. The director concluded that the Service considers the applicant a national of Spain for immigration matters; therefore, she is not able to adjust status under section 1 of the Act of November 2, 1966.

In response to the notice of certification, counsel asserts that the applicant was born in Cuba; therefore, she is a native of Cuba. She states that the term <u>native</u> has been defined in Black Law Dictionary, in pertinent part: "The word native refers to a person's place of birth, so that a person remains a native of his country of birth, though he has moved away therefrom." Counsel further asserts that section 1 states that the status of any alien who is a native or citizen of Cuba may be adjusted. The pertinent statutory language states that an alien can establish eligibility under the CAA in a variety of ways: The alien can be both a native and a citizen of Cuba and qualify for CAA adjustment; an alien can be a native of Cuba and not a citizen of Cuba and be eligible for CAA adjustment; and an alien can be a citizen of Cuba and not a native of Cuba and be eligible for CAA adjustment. Consul contends that the Service's conclusion is neither supported by the pertinent statutory language nor by *Matter of Ognibene, supra*.

The record reflects that the applicant was born in Cuba on April 14, 1977, to a Cuban mother and a Cuban father. The applicant resided in Spain from September 1997 to September 1998. The applicant entered the United States as a visitor on September 8, 1998, with a Spanish passport.

The applicant, in this case, is applying for adjustment of her status to permanent residence under section 1 of the CAA. To be eligible for adjustment of status under section 1 of the CAA, an alien must show only that she is a native or citizen of Cuba, she was inspected and admitted or paroled into the United States, she has been physically present in the United States for at least one year, and that she is admissible to the United States for permanent residence. *See Matter of Masson*, 12 I&N Dec. 699 (BIA 1968).

The applicant was born in Cuba. She is, therefore, a native of Cuba, she was inspected and admitted into the United States subsequent to January 1, 1959, and she 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 director's decision will be withdrawn, and the application will be approved.

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