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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

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

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: 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 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 affirmed.

The applicant is a native and citizen of Italy 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 (CAA). 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 provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

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 Italian. 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 Italy for immigration matters; therefore, she is not able to adjust status under section 1 of the Act of November 2, 1966.

The applicant has provided no statement or additional evidence on notice of certification.

The record reflects that the applicant was born in Italy on August 25, 1974. It is not shown in the record the citizenship or nationality of the applicant's parents. The applicant entered the United States as a visitor on February 14, 2001, with an Italian passport. On February 28, 2002, she filed an application 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 that she is a native <u>or</u> 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 record, as presently constituted, is devoid of evidence establishing that the applicant is a native or citizen of Cuba. In fact, the applicant holds an Italian passport in which it is stated that she is an Italian citizen, and she was admitted into the United States on February 14, 2001, with an Italian passport. In addition, the record contains an extract of a certificate of birth, issued in Cuba on October 30, 2001, which indicates the applicant's place of birth as Rome, Italy.

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that she is eligible for adjustment of status. She has failed to meet that burden.

Accordingly, the applicant is ineligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966. The decision of the director to deny the application will be affirmed.

ORDER: The director's decision is affirmed.