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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

[redacted]

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

FILE: [redacted] Office: Texas Service Center Date: APR 24 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:

[redacted]

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 The director's decision will be withdrawn, and the application will be approved.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 his 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, he 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 *Matter of Ognibene* is distinguishable from the applicant's case in that in his case there is clear statutory construction that specifies that any alien <u>native</u> or <u>citizen</u> of Cuba is eligible to adjust under the CAA. The Act is silent as to dual citizenship which is the Service's "main bone of contention," and that the Service should accept the Act by its clear statutory construction instead of assuming its intended purpose. Counsel further asserts that the Service read more into the Act than was intended. By failing to apply the plain meaning of the Act or any pertinent regulation, the Service has usurped the authority of Congress and the Attorney General. If one applies the plain meaning of "any alien native or citizen of Cuba," one would have to conclude that the statute applies to the applicant since it has not been refuted by the Service that the applicant is a native of Cuba. Counsel states that it is clear the applicant is eligible to adjust his

status under the CAA by virtue of having been born in Cuba, and that he should be afforded that opportunity.

The record reflects that the applicant was born in Cuba on September 25, 1950, to a Cuban mother and a Cuban father. The applicant resided in Spain from June 1997 to September 2000. The applicant arrived in the United States with a Spanish passport on September 22, 2000, and he was paroled until December 21, 2000.

The applicant, in this case, is applying for adjustment of his 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 he is a native <u>or</u> citizen of Cuba, he was inspected and admitted or paroled into the United States, he has been physically present in the United States for at least one year, and that he 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. He is, therefore, a native of Cuba, he was inspected and paroled into the United States subsequent to January 1, 1959, and he 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.