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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS AAO, 20 Mass. Ave., 3/F
Washington, D.C. 20536

PUBLIC COPY

[redacted]

FILE: [redacted] Office: Texas Service Center DATE: APR 29 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]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 Cuba 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. This statute provides for the adjustment of 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, to that of an alien lawfully admitted for permanent residence if 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 ineligible for adjustment of status to permanent residence because he is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The director, therefore, denied the application.

In response to the notice of certification, counsel asserts that the applicant presented himself for inspection as a Cuban national attempting to enter the United States without a valid visa. Once he arrived in the United States he did not use the Nicaraguan passport, and that he presented himself to the immigration inspector as a Cuban national and presented his Cuban passport. Counsel further asserts that the Nicaraguan passport was taken from the applicant by the airline representative at the time of boarding the plane in El Salvador, and he was never in possession of the passport after boarding the plane. Therefore, the applicant did not violate section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C)(i) of the Act states in part:

> Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(a)(7) of the Act states in part:

> (A)(i) Except as otherwise specifically provided in this Act, any immigrant at the time of application for admission --
>
> > (I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and

> a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 211(a), is inadmissible.

The record reflects that on June 5, 2001, at Miami International Airport in Florida, the applicant attempted to gain entry into the United States as an alien in transit without a visa (TWOV) by presenting a Nicaraguan passport belonging to another person into which his photograph had been substituted. The applicant was accompanied by an airline representative for inspection before a Service officer as a TWOV to Madrid, Spain. He was referred to secondary inspection for examination of the document to determine the authenticity of the passport, and he was subsequently searched. The applicant, in a sworn statement before an officer of the Service, stated his true name and indicated that he departed from Cuba on May 26, 2001 with his Cuban passport, but that he left the passport in Nicaragua because he wanted to use the Nicaraguan passport to attempt entry into the United States. He further stated that he paid approximately $4,500 for travel arrangements and documents to an unknown person in Cuba, and that he knew it was illegal to attempt entry into the United States without proper documents. The applicant stated that the airline representative presented the Nicaraguan passport to the U.S. immigration inspector for him. When asked if he had received any benefits from other countries, the applicant responded, "No, because to my knowledge no other will give political asylum, but I did not ask." The applicant was detained for a hearing before an immigration judge after it was determined that he was inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Act.

Citing *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994), counsel asserts that the fraud charges cannot be sustained in regard to someone subject to a primary inspection unless the fraud was practiced on U.S. government officials. He further asserts that in *Matter of D-L- & D-M-*, 20 I&N Dec. 409 (BIA 1991), the Board held that when an applicant from Cuba with photo-switched passport comes to the United States and gives his real name and states that the documents are invalid and instead claims asylum, he did not violate section 212(a)(6)(C)(i) of the Act.

The aliens in *Matter of Y-G-* and *Matter of D-L- & D-M-*, however, were not traveling in transit without visa status, unlike the applicant in the case at hand. The Board, in *Matter of Shirdel*, 19 I&N Dec. 33 (BIA 1984), found that the Afghan nationals who arrived in the United States with fraudulent Turkish passports as transit without visa aliens were inadmissible to the United States, pursuant to section 212(a)(6)(C)(i), for attempting to enter the United States by fraud or material misrepresentation. The Board noted that 8 C.F.R § 212.1(e)(3) (1984) specifies that the TWOV privilege is unavailable to citizens or nationals of Afghanistan, Cuba, Iraq, or Iran, and that the basis for that restriction

imposed on Afghans is their abuse of the TWOV device in order to submit applications for asylum. The Board determined that the applicants committed fraud upon the United States in order to arrive in this country by posing as Turkish citizens, and that the fraud was an integral step in their scheme to eventually enter as refugees.

Counsel asserts that the Nicaraguan passport was taken from the applicant by the airline representative at the time of boarding the plane in El Salvador and he was never in possession of the passport after boarding the plane. The Board, in *Matter of Shirdel*, however, noted:

> In *United States v. Kavazanjian*, 623 F.2d 730 (1st Cir. 1980), the court held that if an alien adopts the [TWOV] device solely for the purpose of reaching the United States and submitting an asylum application without any intention of pursuing the remainder of the journey, it constitutes a fraud on the United States. The [TWOV] device is designed to facilitate international travel by permitting aliens traveling between foreign countries to make a stopover in the United States without presenting a passport or visa. *See* section 212(d)(4)(C), 8 U.S.C. § 1182(d)(4)(C) (1982). To avail himself of the [TWOV] privilege an alien must establish that he is admissible under the immigration laws; that he has confirmed and [sic] onward reservations to at least the next country beyond the United States; and that he will continue his journey and depart this country within 8 hours after his arrival on the next available transport. *See* 8 C.F.R § 214.2(c) (1984); 22 C.F.R § 41.30 (1984).

The applicant, in this case, adopted the TWOV device solely for the purpose of reaching the United States and requesting asylum. Accordingly, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. The applicant is not the recipient of an approved waiver of such grounds of inadmissibility, nor is there evidence in the record that he is eligible to file for a waiver.

In view of the foregoing, the applicant is ineligible for adjustment of status to permanent resident 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.