



U.S. Citizenship
and Immigration
Services

(b)(6)

Date **MAY 13 2013** Office: ORLANDO, FLORIDA

File: [REDACTED]

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

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the California Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron M. Rosenberg".

Ron M. Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Orlando, Florida, denied the application for adjustment of status and then certified the decision to the Administrative Appeals Office (AAO) for review. The decision of the director will be affirmed.

The applicant claims to be a native and a citizen of Cuban 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 CAA provides, in 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, (now the Secretary of Homeland Security, (Secretary)), 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 record reveals the following facts and procedural history. The applicant was admitted into the United States on December 5, 2007, as a nonimmigrant J-1 visitor for the duration of status. On August 9, 2011, the applicant filed an application to adjust his status (Form I-485) pursuant to section 1 of the CAA. On his Form I-485 application and the accompanying Form G-325A, the applicant stated that he was born in Cuba but that his parents were born in Brazil. In support of his application, the applicant submitted a Cuban birth certificate reflecting that his birth was registered in Tomo 657/Folio 565 on June 22, 1981 of the Cuban Civil Registry. At his adjustment of status interview on January 11, 2012, the applicant testified that his parents, who were born in Brazil, were visiting Cuba at the time of his birth. The applicant stated that his parents remained in Cuban for about two weeks and then went back to Brazil. The applicant also stated that he was aware of his birth in Cuba since the age of five. The applicant submitted his Brazilian passport reflecting his Brazilian citizenship. The United States non-immigrant visa which was issued to the applicant in [REDACTED] Brazil on November 20, 2007, indicated the applicant's nationality as Brazil. The applicant applied for and was admitted into the United States on December 5, 2007 as a citizen of Brazil as reflected on the Arrival/Departure record the applicant completed at the port of entry. The applicant presented testimony that was contradictory to previously submitted documents in the record regarding his place of birth and citizenship. Because of the inconsistencies in the record, the director requested overseas verification of the applicant's Cuban birth certificate from the United States Special Interest Section in Cuba. The report confirmed that the applicant's name does not appear in the Civil Registry in Tomo 657/Folio 565 and that the birth certificate is fraudulent.

On February 25, 2013, the applicant was notified to appear for a second interview where he would be confronted with the derogatory evidence relating to his Cuban birth certificate and be given an opportunity to rebut or clarify the inconsistencies and derogatory information. The applicant failed to appear for the second interview as notified. The record reflects that the notice was mailed to the applicant's last known address of record. The record does not reflect that the applicant completed a change of address and there is no evidence that the interview notice was returned as undeliverable.

As a result the director determined that the applicant is not eligible to adjust his status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966 and certified the decision to the AAO.

In his March 6, 2013 notice of certification, the director informed the applicant that the birth certificate he submitted in support of his application was fraudulent. The director denied the applicant's Form I-485 because the applicant was inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act) for seeking to obtain an immigration benefit through fraud and that he is ineligible for adjustment of status under section 1 of the Cuban Adjustment Act of November 2, 1966 (Public Law 89-732). The director denied the application and certified his decision to the AAO for review. The director informed the applicant that he had 30 days to supplement the record with any evidence that he wished the AAO to consider. The applicant has not submitted additional evidence for consideration.

As the applicant has not provided any evidence to dispute the director's findings, the AAO must affirm the decision to deny the I-485 application and further conclude that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act as a person who has attempted or conspired to obtain an immigration benefit through fraud.

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 he is eligible for adjustment of status. The applicant has not met his burden and the director's decision will be affirmed.

ORDER: The director's decision is affirmed.