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U.S. Citizenship and Immigration Services

To: REGIONAL DIRECTORS
SERVICE CENTER DIRECTORS
DISTRICT DIRECTORS
NATIONAL BENEFIT CENTER DIRECTOR

From: Robert C. Divine /s/
Acting Deputy Director

Date: June 30, 2006

Re: *Matter of Buschini* (June 30, 2006)

As Acting Deputy Director I hereby designate the attached decision of the Administrative Appeals Office (AAO) in *Matter of Buschini* as a USCIS Adopted Decision. Accordingly, this decision is binding policy guidance on all USCIS personnel. This AAO decision provides guidance regarding the type of documentation that must be submitted in order to establish Cuban citizenship for purposes of adjustment of status under section 1 of Pub. L. 89-732 (November 2, 1966) as amended (Cuban Adjustment Act). Applicants are required to provide official documentation from the Cuban Government indicating that he or she is a citizen of Cuba. Documents lacking a specific notation that the applicant is a citizen will not ordinarily be accepted as proof of Cuban Citizenship.

USCIS personnel are directed to follow the reasoning in this decision in similar cases.

U.S. Department of Homeland Security
20 Mass. Ave., NW, Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

FOR PUBLICATION

MATTER OF BUSCHINI

In Adjustment of Status Proceedings

A98 064 379

Decided by the CHIEF, Administrative Appeals Office,
June 30, 2006

1. To establish Cuban Citizenship, for purposes of adjustment of status under section 1 of Pub. L. 89-732 (November 2, 1966) as amended (Cuban Adjustment Act), the applicant must establish that he or she is a Cuban citizen by a preponderance of the evidence of record.

2. An alien should be afforded the opportunity to explain why certain documents that would establish citizenship are unavailable.

3. Claims to Cuban citizenship will be evaluated based upon all available evidence.

4. For those who have never resided in Cuba, the most persuasive evidence of Cuban citizenship is a valid Cuban passport.

5. If a Cuban passport is unavailable, another official Cuban document, such as a Cuban Civil Registry document, a Cuban consular certificate of citizenship, or other document signed by a Cuban official with appropriate authority over the registration of citizens indicating that a named individual is a citizen, should be sufficient to establish citizenship.

6. A consular certificate indicating that a person was born outside Cuba to a Cuban citizen parent, without any statement of citizenship, is not, ordinarily, sufficient to establish that a person is a Cuban citizen.

7. A consular certificate, which states that a person is a Cuban citizen, is sufficient to establish that a person is a Cuban citizen.

ON BEHALF OF PETITIONER:

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DISCUSSION: The Acting District Director, Miami, 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 withdrawn and the application approved.

The applicant is a native of Venezuela who was admitted to the United States on December 9, 2002 on a Venezuelan passport as a B-2 visitor. On December 22, 2003 she submitted an application to adjust status to permanent resident pursuant to section 1 of Pub. L. 89-732 (November 2, 1966) as amended (Cuban Adjustment Act).

The director denied the application to adjust status, finding that the applicant had not established that she was a citizen of Cuba and was therefore ineligible to adjust status under the Cuban Adjustment Act. *Decision of the Director*, April 24, 2006.

The applicant, through counsel, asserts the applicant has demonstrated that she is a citizen of Cuba and eligible to adjust status pursuant to the Cuban Adjustment Act. *Letter of Counsel*, April 27, 2006.

The entire record has been reviewed and considered in rendering this decision.

Section 1 of the Cuban Adjustment Act states, in pertinent part:

> [N]otwithstanding the provisions of section 245(c) of the [Immigration and Nationality Act] the 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 [Secretary of Homeland Security], 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 application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence as of a date thirty months prior to the filing of such an application or the date of his last arrival into the United States, whichever is later. Pub. L. 89-732 (November 2, 1966) as amended.

There is no dispute as to the relevant facts in this matter. The applicant was born in Caracas, Venezuela on October 30, 1960 to a Venezuelan father and Cuban mother. In order to establish eligibility under the Cuban Adjustment Act, the applicant must demonstrate that she is a Cuban citizen. The sole issue before the AAO is whether the evidence provided by the applicant establishes that she is a citizen of Cuba. In support of her claim, through counsel, the applicant submitted a copy of her Republic of Cuba, Civil Registry Certification

of Birth (with translation) indicating that the Cuban authorities registered her birth and also indicating that her mother was born in Havana, Cuba. The record also includes a document (with translation) signed by the Chief of the Department of Central Registry, MINJUS (Ministry of Justice), who is in charge of the Special Registry of Cubans Abroad, indicating that the applicant is registered in the Special Registry and consequently is a Cuban citizen. The record also includes the birth certificate and Cuban passport of the applicant's mother, establishing that the applicant's mother was a Cuban citizen.

As indicated by counsel, the AAO has previously held that a birth certificate issued by a Cuban consulate establishes Cuban citizenship. The record includes copies of several such decisions rendered by the AAO and submitted by counsel in support of the applicant's claim. Those decisions relied upon Article 29 of the Constitution of Cuba, which indicates that a person born to a Cuban mother or father is a Cuban citizen by birth. The decisions are also based on the fact that Cuban consulates are charged with keeping track of its overseas citizens. The AAO decisions provided by counsel are not precedent decisions. While the AAO issues decisions in a manner consistent with its best understanding of the law at the time that the decision is issued, a more complete understanding of Cuban law could result in a different decision on similar facts regardless of whether Cuban law has changed.

In cases that require interpretation of foreign law, the Federal courts and Board of Immigration Appeals (BIA) have relied upon the Law Library of the Library of Congress, which retains specialists in foreign law on its staff. *See, Cheung Tai Poon v. INS*, 707 F.2d 258, 259 (6th Cir.1983). *See, Matter of Hosseinian*, 19 I&N Dec. 453, (BIA 1987); *Matter of Nwangwu*, 16 I&N Dec. 61, 62 (BIA 1976); *Matter of Akinola*, 15 I&N Dec. 359, 360 (BIA 1975). The AAO also seeks opinions from the Law Library of the Library of Congress (Law Library) when it must interpret foreign law. Such opinions are not binding, but are often accorded considerable weight given the expertise of the source. The AAO has looked to the Law Library for interpretation of Cuban citizenship laws.

In 2004, the AAO received a response to an inquiry made to the Law Library indicating that a Cuban birth certificate issued by a Cuban consulate proves that the bearer of such a document is a Cuban citizen. LL File No. 2004-01259. It is noted that the aforementioned report from the Law Library also indicates that if there is reason to believe that the bearer of a Cuban certificate of birth is not a Cuban citizen, United States Citizenship and Immigration Services (USCIS) may ask the applicant to show a valid Cuban passport.

On July 7, 2005, a response to an inquiry made to the Law Library by the USCIS Miami district office indicated that individuals born outside Cuba to one Cuban citizen parent are eligible to apply for citizenship. The report states that, in order to be eligible to apply for Cuban citizenship, the individual born to a Cuban parent must be physically present in Cuba for at least three months. LL File No. 2005-01947. The July 7, 2005 response to the Miami district relied in part upon information received from an official within the Cuban Ministry of Foreign Affairs based in Mexico.

Seeking further clarification concerning information that appeared contradictory, the AAO again submitted an inquiry to the Law Library in 2006, referring to the previous reports and seeking an opinion as to whether a certificate of birth issued by a Cuban consulate constituted sufficient proof to establish Cuban citizenship. The response was provided on February 1, 2006, in a report identified LL File No. 2006-02421.

The 2006 report notes that the 2004 inquiry included a copy of a Cuban consulate-issued certificate, which stated that the named individual was born to a Cuban citizen mother and that she therefore was a citizen of Cuba. The 2004 report, in this context, cited articles 14(ch), 20 and 31 of Law 51 concerning the Civil Status Registry. The cited sections of Cuban statute establish that the Civil Status Registry is a network of Cuban Government offices keeping civil status records on Cubans, including records of citizenship. Article 20 of Law 51 provides that Cuban consular offices register facts and events related to the civil status of Cubans abroad. Article 31 of Law 51 provides that records kept by Civil Status Registry offices are proof of the civil status of the individuals registered. LL File No. 2006-02421, p. 2.

Under Cuban law, Cuban consular offices have the authority to keep records of Cuban citizenship for those Cubans who are outside of Cuba. In other words, in 2004, the Law Library concluded that a certificate indicating both that the individual referred to was born to a Cuban mother, and that she therefore was a Cuban citizen, was sufficient to establish Cuban citizenship because it constituted certification of citizenship by the office with the authority to do so. It is noted that the certificate submitted by the applicant in the instant matter indicates that the applicant's mother is a citizen of Cuba but does not include a specific statement regarding the applicant's citizenship. Nonetheless, the applicant also submitted a separate document signed by the Chief of the Department of Central Registry, MINJUS, stating that the applicant is a citizen. It does not appear that the Law Library had access to or considered this particular document in preparing the 2006 report.

The 2006 Law Library report refers to Article 29 of the Cuban Constitution, providing what it describes as a more "precise translation" than the one found on the official website of the Cuban Legislative Body:

> Article 29. Cuban citizens by birth are:
>
> > (c) those born abroad to either a Cuban father or mother, provided that legal formalities are previously met.

It then points out that the official website of the Cuban Ministry of Foreign Affairs indicates that individuals born outside Cuba to one Cuban citizen parent are allowed to register that birth in the Cuban consular office located in the country where the birth took place. LL File No. 2006-02421, p. 4. The report notes that an official with a Cuban consulate in Mexico stated that currently, individuals born outside Cuba to a Cuban citizen parent do not acquire citizenship automatically by registering their birth and obtaining a certificate from the consulate because they must also be physically present in Cuba for three months in order to become eligible to apply for Cuban citizenship. *Id*, at 5. The official was unwilling or unable to identify a law or regulation codifying the three-month presence requirement and no such law or regulation was found. *Id*. The 2006 report did not resolve the apparent contradiction between constitutional language establishing that those born outside Cuba to a Cuban parent are citizens by birth and the unsupported statement of the Cuban consular official that those born outside Cuba must reside in Cuba for a period of three months before they can ***apply*** for citizenship.

In addition to the apparent contradiction between what was stated by the consular official and what is stated in the Cuban constitution, there are inherent limitations to the reliability of information obtained from the Cuban consular official. The lack of official ties between the two governments would constrain any attempt to

determine the expertise of the consulted official. There is no indication that the Cuban official consulted by the Law Library is a particular expert on matters related to the Cuban citizenship of those born outside Cuba. Further, there is a possibility that some anti-United States political bias might affect the content of an answer provided by a Cuban Government official. Finally, even if the information provided about current Cuban practice regarding citizenship is accurate for a particular consulate, because the contacts developed at any consulate are necessarily unofficial, there is no guarantee that another consulate would enforce the same practice.

In the present case, the Chief of the Department of Central Registry, MINJUS, the department with the legal authority to keep track of Cuban citizens abroad, issued a document specifically stating that this applicant is a citizen, despite the fact that the applicant never resided in Cuba. There is no evidence that the applicant has done anything subsequent to the issuance of the aforementioned document to lose her citizenship. An official statement that a particular individual is a citizen, made by an official with the authority to recognize citizenship, is more authoritative than a general statement from a Cuban official made in response to a general question from an employee of the United States Government describing how Cuban citizenship law is practiced.

The Law Library report also indicates that the Cuban Government, in a report to the United Nations pursuant to resolution 1373 (2001) concerning counter-terrorism made the following statement:

> In Cuba legislative provisions relating to the granting of citizenship or other civil rights are contained in the Republic's Constitution; Law No. 59/187, Civil Code; Law No. 51/85 on the Registration of Civil Status; Resolution No. 157/85, which provides its regulations; Decree No. 358 of 4 February 1944 on Citizenship Regulations and its supplementary provisions. *Id.*

The response from the Law Library indicated that Article 29(c) of the Cuban Constitution and Decree No. 358 on citizenship regulations are the only bodies of law cited by the Cuban Government to the United Nations above that are relevant to the matter at hand. Articles 3(b) and 5(4) of decree 358 indicate that individuals born outside Cuba to either a Cuban father or mother are required to reside in Cuba in order to become eligible to apply for Cuban citizenship. No time requirement is indicated. *Id*., at 6. Although decree 358 was published in 1944, it is noted that the Cuban Government referred to it in a report to the United Nations in 2001. The Law Library was unable to locate any update of decree 358 and unable to locate the supplementary provisions to decree 358. *Id*., at 7.

An applicant must demonstrate by a preponderance of the evidence that she is eligible for the benefit sought. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, clearly places the burden of proof upon an applicant to establish eligibility. To be eligible for adjustment of status pursuant to the Cuban Adjustment Act, the burden is on the applicant to establish that she is a citizen of Cuba.

United States law does not establish the requirements for Cuban citizenship. Cuba, like any independent state, decides who is a Cuban citizen based upon its own laws and regulations. The three reports from the Law Library offer useful information but do not provide clearly stated legal principles regarding the requirements to establish Cuban citizenship for those born outside of Cuba to at least one Cuban parent. Instead, the reports considered together indicate that the requirements for establishing citizenship for those

born outside Cuba to one Cuban parent are unclear. In the absence of clearly stated principles for determining who is a Cuban citizen, each Cuban Adjustment Act applicant's claim to be a Cuban citizen must be evaluated individually, based upon the available evidence. A valid Cuban passport would be the most persuasive evidence of citizenship. It is recognized that it is not always possible for a Cuban citizen to obtain a Cuban passport. In the absence of a passport, some other official Cuban document may be presented to establish that the applicant is a citizen of Cuba.

A consular report of birth without any statement of citizenship presents a special concern. The Library of Congress reports, while not providing conclusive evidence, indicate that at this time it is not clear that proof of birth abroad to a Cuban parent, without more, is sufficient to establish Cuban citizenship. Thus, a consular certificate indicating that a person was born outside Cuba to a Cuban citizen parent is not, ordinarily, sufficient, by itself, to establish that a person is a Cuban citizen.

A different situation exists if a consular certification affirmatively states that a particular person is a Cuban citizen. The reports from the Law Library clearly indicate that consular officials have the authority to determine claims to Cuban citizenship made by persons outside Cuba. In addition, a core consular function is the protection of the interests of nationals of the sending State in the receiving State. *Vienna Convention on Consular Relations,* art. 5 (Apr. 24, 1963), http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf. A consular official, therefore, necessarily has authority to determine whether a person is a citizen of the consul's State. For this reason, a consular certificate that affirmatively states that the person to whom it relates is a Cuban citizen is sufficient to establish that the person was a Cuban citizen on the date of the certificate. In the absence of proof that the person later lost Cuban citizenship, such a certificate would be sufficient to meet the applicant's burden of proof.

In the present case, the applicant provided proof that she is the daughter of a Cuban mother, and proof that she registered her birth with the appropriate Cuban authorities. Also included in the record is a certified copy of a document from the Cuban civil registry, indicating that the applicant is a citizen of Cuba. This document is sufficient to establish that the applicant was a Cuban citizen when the document was issued. There is no suggestion in the record that she later lost Cuban citizenship. The applicant has also presented a copy of her mother's Cuban birth certificate. When the record is considered in its entirety, the preponderance of the evidence establishes that the applicant is a Cuban citizen.

There is no evidence of record that the applicant is inadmissible to the United States. Whether to grant adjustment of status is a matter of discretion. The applicant's remaining in the United States unlawfully after her B-2 status expired is an adverse factor. On the current record, however, this factor is not sufficient to warrant denial of adjustment of status as a matter of discretion.

ORDER: The decision of the director is withdrawn and the application for adjustment of status is approved.