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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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[REDACTED]

FILE:

[REDACTED]

Office: WEST PALM BEACH FIELD OFFICE

SEP 13 2010  
Date:

IN RE:

Applicant:

[REDACTED]

APPLICATION: Application for Adjustment of Status to that of Person Admitted for Permanent Residence under Section 1 of the Cuban Refugee Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF APPLICANT:

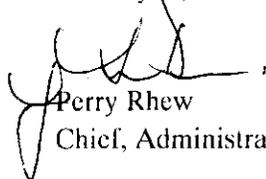
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INSTRUCTIONS:

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 office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, West Palm Beach, Florida, who certified her decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The application will be denied.

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 (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.

A review of the record reveals the following facts and procedural history: The applicant attempted to enter the United States at the Ysleta Port of Entry, El Paso, Texas on June 30, 2001. The record includes a Form I-867A, Record of Sworn Statement, dated June 30, 2001, in which the applicant admitted that she had stated that she was a United States citizen in order to gain admission into the United States. The record also includes a Form I-296, Notice to Alien Ordered Removed/Departure Verified, in which the applicant was notified that she was prohibited from attempting to enter or being in the United States for a period of 5 years. On July 5, 2001, the applicant entered the United States without inspection. On September 18, 2003, the applicant was granted parole. On or about October 28, 2004, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The acting district director denied the application on August 4, 2006 and certified her decision to the AAO for review. Upon review of the record, including counsel's assertion that the applicant denied making a false claim of United States citizenship, the AAO affirmed the acting district director's decision on September 4, 2008. On or about February 1, 2008, the applicant filed a second Form I-485. The field office director denied the application for the same reason set out in the previous August 4, 2006 decision and certified her decision to the AAO for review.

The issue in this matter is whether the applicant is inadmissible under section 212(a)(6)(C) of the Act. Section 212(a)(6)(C) states in pertinent part:

- (i) 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.
- (ii) Falsely claiming citizenship –
  - (I) In general – any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible

- (II) Exception – In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16 and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

On certification, counsel for the applicant submits a brief as well as a polygraph test report dated October 8, 2008. Counsel again asserts that the applicant denies representing that she was a United States citizen when she attempted to enter the United States on June 30, 2001 and references the polygraph examiner's report in support of the assertion. Counsel contends that USCIS has failed to provide the derogatory evidence upon which it relies in determining that the applicant made the false statement regarding citizenship, for the review and examination by counsel and the applicant. Counsel requests that the AAO remand this matter to the field office director and schedule an interview for the applicant. Counsel requests that in the alternative that the AAO issue a Notice to Appear (NTA) or remand this matter to the field office director with instructions to issue an NTA.

Upon review of the totality of the record in this matter, the AAO finds sufficient information in the record to support the field office director's conclusion that the applicant did falsely claim to be a United States citizen on June 30, 2001. Based on the record, the AAO finds that the applicant committed a misrepresentation and is therefore inadmissible under section 212(a)(6)(C) of the Act. The AAO notes that counsel has submitted the results of a polygraph exam and that in federal court proceedings, evidence of the results of a polygraph test is inadmissible and may not be "introduced into evidence to establish the truth of the statements made during the examination." *United States v. Bowen*, 857 F.2d 1337, 1341 (9th Cir. 1988); *see also United States v. Frogge*, 476 F.2d 969 (5th Cir. 1973), *cert. denied*, 414 U.S. 849 (1974). In immigration proceedings, however, documentary evidence need not comport with the strict judicial rules of evidence. Instead, as in deportation proceedings, "such evidence need only be probative and its use fundamentally fair, so as not to deprive an alien of due process of law." *Matter of Velasquez*, 19 I&N Dec. 377 (BIA 1986); *see also Matter of D*, 20 I&N Dec. 827, 831 (BIA 1994).

In the present matter, the polygraph results are not probative. The opinion of the examiner does not provide the scope of all the polygraph questions asked but shows only that three questions were asked regarding the applicant's attempt to enter the United States on June 30, 2001. Furthermore, the value of the polygraph is questionable for the same reasons that have led the federal courts to find them inadmissible. As previously mentioned, the results of a polygraph test may not be used to establish the veracity of the assertion tested. In establishing this rule, the courts have determined that "the polygraph has not yet been accepted . . . as a scientifically reliable method of ascertaining truth or deception." *United States v. Gloria*, 494 F.2d 477 (5th Cir. 1974).

As the applicant falsely claimed to be a United States citizen after September 30, 1996, she is not eligible for a waiver of this misrepresentation and the record fails to demonstrate that she qualifies for the exception as described in section 212(a)(6)(C)(ii)(II) of the Act. The applicant is, therefore,

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ineligible for adjustment of status to permanent residence, pursuant to Section 1 of the CAA of November 2, 1966.

In proceedings for adjustment of status, under the CAA the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the field office director's decision denying the application will be affirmed.

**ORDER:** The field office director's decision is affirmed. The application is denied.