



November 21, 2017

PM-602-0154

## Policy Memorandum

SUBJECT: Updated agency interpretation of Cuban citizenship law for purposes of the Cuban Adjustment Act; rescission of *Matter of Vazquez* as an Adopted Decision

### Purpose

This Policy Memorandum rescinds *Matter of Vazquez*<sup>1</sup> as an Adopted Decision in accordance with the reasoning contained in this memorandum. *Matter of Buschini*<sup>2</sup> remains overruled and inoperative, as this memorandum supercedes all prior guidance regarding the determination of Cuban citizenship for the purposes of adjustment under Pub. L. 89-732 (November 2, 1966), as amended, the Cuban Adjustment Act (CAA).<sup>3</sup>

### Scope

Based on new information and further evaluation, USCIS hereby updates its interpretation of Cuban citizenship law as follows:

The consular registration of a child's birth outside of Cuba to a Cuban citizen parent does not accord Cuban citizenship to the child. Rather, for the child to be accorded Cuban citizenship, the consular certificate documenting the child's birth to at least one Cuban parent must be formally registered in Cuba by the Cuban Ministry of Justice after all legal requirements for Cuban citizenship are satisfied. Consequently, an individual's Cuban consular certificate documenting birth to at least one Cuban parent cannot serve as evidence of the individual's Cuban citizenship for purposes of the CAA because the consular certificate is issued before it is formally registered in Cuba by the Cuban Ministry of Justice. This remains true even if the consular certificate states that the individual to whom the certificate was issued is a Cuban citizen.

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<sup>1</sup> See *Matter of Vazquez*, Adopted Decision 07 006 (AAO July 31, 2007).

<sup>2</sup> See *Matter of Buschini*, USCIS Adopted Decision 06-0004 (AAO, June 30, 2006).

<sup>3</sup> See section 1 of Pub. L. 89-732 (November 2, 1966) as amended (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."

## Background

Under section 1 of the Cuban Adjustment Act (CAA), USCIS may adjust to lawful permanent resident status a native or citizen of Cuba who meets certain requirements.<sup>4</sup> Thus, USCIS may adjust the status of an eligible applicant, whether born in or outside of Cuba. See, e.g., *Matter of Masson*, 12 I&N Dec. 699 (BIA 1968) (Haitian citizen born in Cuba eligible) and *Matter of Riva*, 12 I&N Dec. 56 (INS 1967) (Cuban citizen born in Mexico eligible).

Cuban law allows Cuban citizens living abroad to register the birth of their children with the Cuban consulate in the country of the children's birth. However, both the structure of pertinent Cuban law, and the varying types of documentation that are issued to such children as evidence of their consular birth registration, have complicated USCIS' determination of when an individual born outside of Cuba to a Cuban citizen parent is deemed under Cuban law to have acquired Cuban citizenship. For instance, while some consular certificates issued by Cuban consulates to such children assert that the subject of the document is a Cuban citizen, such documents simply verify the facts of the subject's birth and of a parent's Cuban citizenship.

USCIS' interpretation of this issue (when is an individual born outside of Cuba to a Cuban citizen parent deemed under Cuban law to have acquired Cuban citizenship) has been informed by, among other sources, three Library of Congress (LOC) reports<sup>5</sup> and then memorialized in two adopted AAO decisions, *Matter of Buschini*, USCIS Adopted Decision 06-0004 (AAO 2006) and *Matter of Vazquez*, USCIS Adopted Decision 007-0006 (AAO 2007).

In *Buschini*, the AAO (and USCIS, upon adoption) relied upon the LOC opinions to conclude that, under Cuban citizenship law, an individual born outside Cuba to a Cuban parent must first reside in Cuba to be eligible for Cuban citizenship. *Buschini* concluded that USCIS should not accept a Cuban consular certificate documenting an applicant's birth outside Cuba to at least one Cuban parent unless it included a statement of citizenship.

A year later, in *Vazquez*, the AAO revisited this issue and, upon USCIS adoption, overruled *Buschini*. In *Vazquez*, p.4 n.1, the AAO summarized the trio of LOC reports as follows:

In 2004, the Law Library responded to an AAO inquiry indicating that a Cuban birth certificate issued by a Cuban consulate was proof that the bearer of such document was a Cuban citizen. LL File No. 2004-01259. On July 7, 2005, the Law Library indicated that individuals born outside Cuba to one Cuban citizen parent must have been physically present in Cuba for at least three months to be eligible to apply for citizenship. LL File No. 2005-01947. A third response, provided by the Law Library on February 1, 2006, summarized the two previous reports and provided a more complete analysis of Cuban

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<sup>4</sup> Cuban Adjustment Act (CAA) of November 2, 1966, Pub. L. No. 89-732, 80 Stat. 1161 (1966), as amended, 8 U.S.C. § 1255.

<sup>5</sup> With respect to the interpretation of foreign law, federal and administrative case law often recognize the expertise of the Law Library of the Library of Congress. See, e.g., *Cheung Tai Poon v. INS*, 707 F.2d 258, 259 (6th Cir.1983); *Matter of Rowe*, 23 I&N Dec. 962 (BIA 2006); *Matter of Hosseinian*, 19 I&N Dec. 453 (BIA 1987); *Matter of Khatoon*, 19 I&N Dec. 153 (BIA 1984); *Matter of Dhillon*, 16 I&N Dec. 373 (BIA 1977).

law and practice regarding the acquisition of citizenship by an individual born outside Cuba to a Cuban parent. LL File No. 2006-02421. In explaining its seemingly contradictory 2004 and 2005 responses regarding the acquisition of citizenship, the Law Library noted that its 2004 response indicating that a Cuban birth certificate was proof of citizenship was not intended to apply to all Cuban birth certificates, only to the birth certificate it had reviewed in that inquiry, which specifically stated that the bearer was a Cuban citizen. LL File No. 2006-02421.<sup>6</sup>

The AAO and USCIS were persuaded by applicant-submitted statements from three expatriate Cuban lawyers who advised that registering a child's birth outside Cuba to a Cuban citizen parent at a Cuban consulate operated, by itself, to establish Cuban citizenship. They also averred that the residency requirement, provided in Decree No. 358, Article 3(b), of 1944 (*Reglamento de ciudadanía*<sup>7</sup>) was not in force in Cuba and maintained that Article 29 of the 1976 Cuban Constitution, as well as Civil Registry Law No. 51 of 1985, supplanted Decree 358. Relying on this analysis, USCIS overruled *Buschini*, and returned USCIS to its earlier practice of accepting Cuban consular certificate documenting an individual's birth outside Cuba to at least one Cuban parent as proof of Cuban citizenship, even if the consular certificate did not contain a statement of citizenship.

However, for the following reasons, USCIS is no longer persuaded that the reasoning upon which *Vazquez* is based is accurate.

The websites of the Cuban embassies to Spain and Canada explain that registering a child's birth to Cuban citizens abroad does not make the child a Cuban citizen.<sup>8</sup> Further, since *Vazquez* was decided, USCIS has identified several sources that indicate Decree No. 358 and its residency requirement, in fact, have been in effect under Cuban law. For example, the 2006 LOC report cited a 2004 counter-terrorism report the Cuban government submitted to the United Nations, which contained the following statement: "In Cuba legislative provisions relating to the granting of citizenship or other civic rights are contained in the Republic's Constitution; Law No. 59/1987, 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." (emphasis added).<sup>9</sup> This passage, the LOC reasoned, indicates that Decree 358 still governs matters of Cuban citizenship law. Consistent with its 2004 counter-terrorism report, the Cuban government's 2009 report listed Decree 358 among the

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<sup>6</sup> See Appendices A, B, and C for copies of the LOC reports.

<sup>7</sup> English translation: "Regulation of Citizenship."

<sup>8</sup> See [http://misiones.minrex.gob.cu/espana/servicios-consulares#transcripcion\\_nacimiento](http://misiones.minrex.gob.cu/espana/servicios-consulares#transcripcion_nacimiento) and <http://misiones.minrex.gob.cu/en/canada/consular-services> (accessed November 8, 2017).

<sup>9</sup> See Fourth Report of the Republic of Cuba to the Counter-Terrorism Committee of the Security Council, submitted to paragraph 6 of resolution 1373 (2001), p. 18. <http://www.refworld.org/pdfid/46dc1ec5d.pdf> (accessed November 8, 2017).

laws regulating travel to Cuba.<sup>10</sup> Canada’s Immigration and Refugee Board concluded in 2009 that Decree No. 358 remains in effect.<sup>11</sup>

Article 3(b) of Decree No. 358 provides: “The following are Cubans by birth: ... b) those born abroad, to either a Cuban father or mother, *provided that they (i.e., the individuals born abroad) reside in Cuba.*” (emphasis added). Next, Article 5(4) of the same Decree provides:

ARTICLE 5. Cubans by birth described in article 3(b) of this regulation will obtain a Certificate of Nationality, *provided that the following requirements are previously met:*

...

(4) If the applicant lives outside of Havana, the Mayor of the municipality where the applicant lives will issue a report certifying that the applicant lives in such municipality. If the applicant lives in Havana, the report will be issued by the head of the police station closer to the domicile of the applicant. The applicant must be really in Cuba.

(emphasis added).<sup>12</sup> In 1976, Cuba adopted a new Constitution, article 29(c) of which provides: “Cuban citizens by birth are: . . . (c) those born abroad to either a Cuban father or mother *provided that legal formalities are previously met; . . .*” (emphasis added).<sup>13</sup>

Notwithstanding, the applicant in *Vazquez*, through declarations of witnesses expert in Cuban law, asserted that Decree 358 did not survive the 1976 Constitution and, accordingly, a residency requirement is not one of the “formalities” contemplated in Article 29(c). Instead, the applicant maintained that Decree No. 358 was supplanted by Civil Registry Law No. 51 (1985).<sup>14</sup>

Specifically, the applicant in *Vazquez* maintained that, within Law No. 51, Article 3 (listing acquisition of Cuban citizenship as one of the events that can be registered as affecting civil status) must be read in conjunction with the first sentence of Article 20, which provides: “[T]he consular offices of Cuba shall record the actions and acts related to the civil status of Cubans and children of Cubans abroad, which shall be transcribed in the office of the Special Registry.” Thus, the applicant argued, Article 20 necessarily means that registry of birth with a Cuban consulate, alone, suffices to establish citizenship.

However, the next sentence in Article 20 indicates that the practice of registering a child’s birth at a Cuban consulate exists chiefly to establish a fact – the birth of a child born outside of Cuba

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<sup>10</sup> See <http://anterior.cubaminrex.cu/Terroristas/Articulos/DenunciaDeCuba/2009-02-20-Sexto-Informe.html> (accessed October 5, 2017). While this counter-terrorism report is not focused primarily on citizenship issues, Cuba’s response to question 2.4.2 focuses on the laws governing entry of individuals into Cuba.

<sup>11</sup> See <https://www.justice.gov/sites/default/files/eoir/legacy/2013/11/07/CUB103126.FE.pdf> (accessed November 8, 2017).

<sup>12</sup> This translation appears in the 2006 LOC report at Appendix C.

<sup>13</sup> This translation appears in the 2006 LOC report at Appendix C.

<sup>14</sup> The applicant provided a partial translation of Law No. 51; the complete text of Law No. 51 is available in Spanish at the website of Cuba’s National Assembly. See <http://www.parlamentocubano.cu/?documento=ley-del-registro-del-estado-civil> (accessed November 8, 2017).

to a Cuban citizen parent – rather than to accord Cuban citizenship to the child. As translated, Article 20 states: “Consular and diplomatic officials authorized to register acts concerning civil status send the registration to the Ministry of Justice within 15 days, through the Ministry of Foreign Affairs, and, in the case of formalization of marriage, provide a certified copy of the record.” This indicates that consular registration of the child’s birth is merely the first step in a two-step legal process, and that the child is not accorded Cuban citizenship until his or her consular birth registration is formally registered in Cuba by the Cuban Ministry of Justice. Consequently, for this reason, an individual’s Cuban consular certificate documenting their birth outside Cuba to at least one Cuban parent cannot possibly serve as evidence of the individual’s Cuban citizenship because such documentation is issued *before* the second step in the Cuba’s two-step process has been fulfilled. This remains true even if the consular certificate states, as some do, that the child is a Cuban citizen. Therefore, while an individual who possesses a consular certificate might possibly be a Cuban citizen (if the second step in the process was in fact completed), the individual’s consular certificate cannot itself establish that fact.

While Article 3 lists citizenship acquisition as a civil status event, it does not prescribe *how* citizenship is acquired or *who* so determines citizenship on behalf of the Cuban government. Moreover, while articles 40 through 57 address birth registration, there are separate provisions, in articles 79 through 81, for registration of events affecting citizenship. None of these provisions, expressly or impliedly, makes birth abroad to a Cuban parent, by itself, enough to confer citizenship.

Further, Law No. 51 does not abrogate Law No. 1312 (1976), which implements the citizenship provisions of the 1976 Constitution. The second of three “final dispositions” at the end of Law No. 1312 section expressly abrogates “Title II” of Decree 358. This specificity is critical because the residency requirement resides in Title I. Further, as indicated in Articles 3 and 5 of Decree 358, which recognize *jus sanguinis* (right of blood) as a basis for citizenship so long as other requirements are satisfied, Title I’s residency requirement is not incompatible with the conferral of Cuban citizenship to one’s child.

The re-establishment of diplomatic relations between the United States and Cuba afforded an opportunity to seek clarity directly from the Cuban government. In June 2015, through an exchange of diplomatic notes, USCIS received clarification from the Cuban government that the registration of the Cuban consular certificate of birth is not sufficient evidence of Cuban citizenship:

[T]he Ministry [of Foreign Relations] wishes to state that Article 29 of Constitution of the Republic of Cuba defines which persons are eligible to obtain Cuban citizenship, including those born abroad to a Cuban father or mother, provided they comply with legal requirements, and those born outside [our] national territory to a Republic of Cuba-natural-born father or mother who had lost their Cuban citizenship, provided they claim it as prescribed by law. Decree Number 358 of February 4, 1944, Citizenship Regulation, is the statute that complements what is stipulated in the Constitution on this subject.

In relation to the questions sent by United States Citizenship and Immigration Services (USCIS), the Ministry has to convey that in order to acquire Cuban citizenship it is not sufficient to have had registered the birth of a child to Cuban citizens within the Civil Registry of Cuba, but it is also necessary to comply with the Citizenship Regulation provisions, including the requirement of residency within the Cuban national territory.

The following describes the documents that applicants must provide in the process of obtaining Cuban citizenship, distinguishing between minors and 18 years of age or older, in accordance to the Citizenship Regulation provisions:

...

- Affidavit from a family member that has consanguineous link to the applicant, or failing that, from a person with whom has a friendship relation, authorizing [the applicant] to reside permanently in their house.
- Cuban birth certificate.
- This documentation must be presented with the corresponding Identification, Migration and Immigration Directorate (DIIE, in Spanish) unit, depending on the municipality in which the applicant will reside.

With these documents the residency record, which must be approved by the DIIE, will be registered. After the established legal period, residency in the territory will be formalized. Cuban citizenship is obtained after this act of registration, through the issuance of the Cuba passport and identity card.

This diplomatic note confirms that someone born outside of Cuba does not obtain Cuban citizenship merely through the registration of the Cuban consular certificate of birth.<sup>15</sup> Finally, on March 31, 2017, the Library of Congress issued USCIS a fourth report concluding that those born to a Cuban parent abroad do not automatically acquire Cuban citizenship through registration of the Cuban consular certificate. LL File No. 2017-014684.

Generally, USCIS officers should not need to make factual determinations related to length of residence. Instead, USCIS officers will determine whether official Cuban government documents, submitted in support of an application for adjustment of status, are probative of the claimed Cuban citizenship.<sup>16</sup>

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<sup>15</sup> Further corroboration is available on the website of the Cuban Embassy in Ecuador in the transcript of birth section. See <http://www.cubadiplomatica.cu/ecuador/ServiciosConsulares.aspx#AVECINDAMIENTO> (accessed: November 8, 2017).

<sup>16</sup> USCIS was unable to locate a source of Cuban law to specify the *duration* of required residence. That said, the Library of Congress related in its 2005 and 2006 reports that Cuban government officials it consulted stated a residency requirement of “at least three months.” See the LOC reports at Appendices B and C. In its 2017 report, the Library of Congress cited the official website of the Cuban embassy in Ecuador as indicating “three to six months” of residence is necessary. Transcripción del Nacimiento, EMBAJADA DE CUBA EN ECUADOR: SERVICIOS CONSULARES, <http://www.cubadiplomatica.cu/ecuador/ServiciosConsulares.aspx#TRNAC> (last visited November 8, 2017), archived at <https://perma.cc/B3KD-3H7A>. See the 2017 LOC report at Appendix D.

Please note, however, that, effective January 1, 2018, the Cuban government may be eliminating the Cuban residency requirement for Cuban citizenship for children born outside of Cuba to at least one Cuban parent. Even if the residency requirement is eliminated, USCIS still finds that a Cuban consular certificate of birth is insufficient to demonstrate Cuban citizenship for someone born outside of Cuba to a Cuban parent because, as described previously, Article 20 indicates that consular registration of birth is only the first step towards a path to Cuban citizenship and so the Cuban consular certificate of birth cannot demonstrate that Cuban citizenship has been accorded.

### **Policy**

Effective immediately, USCIS rescinds its adoption of *Matter of Vazquez*. *Matter of Buschini* remains overruled and inoperative, as this memorandum supercedes prior guidance.

### **Adjudicator's Field Manual Update**

In accordance with the agency's clarified interpretation of Cuban citizenship law, as explained in this memorandum, Chapter 23.11(b)(1) of the Adjudicator's Field Manual is amended by deleting the sentences below:

. [ This bullet point revised 01-03-2007 .] For those who have never resided in Cuba, the most persuasive evidence of Cuban citizenship is a valid Cuban passport.

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. *Matter of Buschini* (June 30, 2006), USCIS Administrative Appeals Office Adopted Decision, **Appendix 23-6** .

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.

Further, Chapter 23.11(b)(1) of the Adjudicator's Field Manual is amended by inserting the following sentence in their stead:

- A person who was born outside of Cuba to a Cuban parent, and who has satisfied all Cuban legal requirements for the acquisition of Cuban citizenship.

Principal applicants must submit evidence of Cuban citizenship. The following are examples of acceptable documents to prove citizenship:

- A valid Cuban passport.
- A Cuban Civil Registry document issued in Havana.

A Cuban consular certificate documenting an individual's birth outside of Cuba to at least one Cuban parent is not sufficient to establish Cuban citizenship. This remains true even if the consular certificate states that the individual to whom the certificate was issued is a Cuban citizen.

**Use**

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

**Contact Information**

Questions or suggestions regarding this PM should be addressed through appropriate directorate channels.

## Appendix A

2004-01259

### LAW LIBRARY OF CONGRESS

#### CUBA

#### LOSS OF CUBAN CITIZENSHIP

Cuban citizenship is acquired by birth or through naturalization.<sup>1</sup> Individuals born outside Cuba with one parent that is a Cuban citizen are considered Cuban citizens by birth, provided they comply with applicable regulations and procedures.<sup>2</sup> Cuban citizenship is lost by becoming a citizen of a foreign country.<sup>3</sup>

A Cuban birth certificate issued by a Cuban consulate proves that the bearer of such a document is a Cuban citizen.<sup>4</sup> However, a Cuban passport is the document that verifies the identity and Cuban nationality of the bearer outside Cuba.<sup>5</sup> Cuban passports must be renewed every six years.<sup>6</sup> At the time of application for a Cuban passport, Cuban Consular Services will require the applicant to prove that he is a Cuban citizen.<sup>7</sup>

Therefore, if there is reason to believe that a bearer of a Cuban certificate of birth is not a Cuban citizen anymore, CIS may ask the applicant to show a valid Cuban passport.

Prepared by Gustavo Guerra  
Legal Specialist  
October 2004

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<sup>1</sup> Constitution of the Republic of Cuba, art. 28, OFFICIAL GAZETTE OF THE REPUBLIC OF CUBA (O.G.), Special Edition No.3, Jan. 31, 2003.

<sup>2</sup> *Id.*, art. 29.

<sup>3</sup> *Id.*, art. 32.

<sup>4</sup> Law 51/85 on the Registration of Civil Status, arts. 14 (ch), 20, 31, O.G., Aug. 22, 1985.

<sup>5</sup> Section of Cuban Passports, official website of the Cuban Department of Foreign Affairs, at: [http://www.cubaminrex.cu/Consulares/inicio\\_consulares.asp](http://www.cubaminrex.cu/Consulares/inicio_consulares.asp). See also: Decree 26, Cuban Immigration Regulations, O.G. July 31, 1978.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

## Appendix B

2005-01947

### LAW LIBRARY OF CONGRESS

#### CUBA

#### NATIONALITY & CITIZENSHIP

##### I. Facts:

The Department of Homeland Security, Citizenship and Immigration Services (CIS), has posed a general question affecting many cases, concerning the citizenship of persons born of Cuban parents outside Cuba. CIS has submitted synopses of two sample cases (~~REDACTED~~).

##### II. Questions:

1. Can individuals born outside Cuba to one (or two) Cuban parent(s) derive Cuban citizenship without having to physically reside in Cuba for a specified period?
2. Which official documents are indicative that Cuban citizenship has been granted to a person born outside Cuba?

##### III. Conclusion:

Individuals born outside Cuba to one parent who is a Cuban citizen are eligible to apply for citizenship.<sup>1</sup> In order to apply for Cuban citizenship, individuals born outside Cuba to one Cuban parent are required to be physically present in Cuba for at least three months.<sup>2</sup> The same standards apply to individuals born outside Cuba to two parents who are both Cuban citizens.<sup>3</sup> A current Cuban passport is indicative that the bearer is a Cuban citizen.<sup>4</sup> In addition, Cuban law provides that the offices of vital records have the authority to issue certificates of citizenship.<sup>5</sup>

Prepared by Gustavo Guerra  
Foreign Law Specialist  
July 2005

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<sup>1</sup> CONSTITUTION OF THE REPUBLIC OF CUBA art. 29 (c), OFFICIAL GAZETTE OF THE REPUBLIC OF CUBA (O.G.), Special Ed. No.3, Jan. 31, 2003.

<sup>2</sup> Telephone Interview with Yadira Castro, Official with the Cuban Ministry of Foreign Affairs (June 21, 2005).

<sup>3</sup> *Id.*

<sup>4</sup> Official website of the Cuban Department of Foreign Affairs at [http://www.cubaminrex.cu/Consulares/inicio\\_consulares.asp](http://www.cubaminrex.cu/Consulares/inicio_consulares.asp) (last visited June 24, 2005).

<sup>5</sup> Law 51/85 on the Registration of Civil Status, as amended, arts. 14, 31, 34 and 79, O.G., Aug. 22, 1985.

## Appendix C

2006-02421

### LAW LIBRARY OF CONGRESS

#### CUBA

#### NATIONALITY AND CITIZENSHIP

##### *Executive Summary*

*The Constitution of the Republic of Cuba provides that individuals born outside Cuba to either a Cuban father or mother are Cuban citizens by birth, provided that legal formalities previously are met.*

*An official with the Cuban Ministry of Foreign Affairs indicated that birth certificates issued by Cuban consulates to individuals born outside Cuba to one parent who is a Cuban citizen are not evidence of Cuban citizenship, as these individuals currently are required to be physically present in Cuba for at least three months in order to become eligible to apply for Cuban citizenship. Furthermore, articles 3 (b) and 5 (4) of decree 358, Citizenship Regulation, as enacted in 1944, provide 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.*

*Accordingly, as a matter of Cuban constitutional law as it is currently implemented, birth certificates presently issued by Cuban consulates to individuals born outside Cuba to one parent who is a Cuban citizen are not evidence of Cuban citizenship, given that these individuals are currently required to be physically present in Cuba for at least three months in order to become eligible to apply for Cuban citizenship.*

#### **I. Question**

The Administrative Appeals Office, Department of Homeland Security (DHS), submitted the following question:

The Administrative Appeals Office (AAO) is attempting to resolve an issue regarding derivative Cuban citizenship. Gustavo E. Guerra has provided two decisions on the issue: one for John Grissom of the AAO (LL File No. 2004-01259) and one for Monica Hesles of the Miami District Office (LL File No. 2005-01947). The primary concern is whether a Cuban birth certificate issued by a Cuban consulate is evidence of Cuban citizenship.

The information provided in report 2004-01259 indicates that individuals born outside Cuba to one parent who is a Cuban citizen are considered Cuban citizens by birth and, further, that a Cuban birth certificate issued by a Cuban consulate proves that the bearer is a Cuban citizen.

The information sent to Monica Hesles indicates that an individual born outside Cuba to one or two parents who are Cuban citizens must apply for citizenship and must have been physically present in Cuba for at least three months. The decision states that a current Cuban passport is indicative that the bearer is a Cuban citizen. There is no mention of birth certificates.

Though not entirely contradictory, the two decisions could lead to two different interpretations as to what constitutes evidence of Cuban citizenship for individuals born abroad to Cuban parents. What we would like to determine is whether a Cuban birth certificate issued by a Cuban consulate is, in and of itself, evidence of Cuban citizenship. If such a birth certificate is

issued to an individual should we assume that the consulate did whatever research necessary to determine the validity of the individual's claim to Cuban citizenship?

## II. Reports 2004-01259 and 2005-01947

The requester indicated in her question that reports 2004-01259 and 2005-01947 “could lead to two different interpretations as to what constitutes evidence of Cuban citizenship for individuals born abroad to Cuban parents,” and is asking for clarification as to the value of “a Cuban birth certificate issued by a Cuban consulate” with respect to serving as evidence of Cuban citizenship. A summary of Reports 2004-01259 and 2005-01947 follows.

### A. Report 2004-01259: Loss of Cuban Citizenship

Report 2004-01259 was written in response to the following question submitted by Mr. John Grissom:

If a citizen of a country other than Cuba (e.g., Venezuela) goes to the Cuban consulate and gets a Cuban birth certificate stating that the person is a Cuban citizen based on having had Cuban parents, are there factors that could terminate such Cuban citizenship?

The reason for my question is to determine whether U.S. Citizenship and Immigration Services should grant benefits to such a person under the Cuban Adjustment Act, or whether there is some reason to insist that such a person should have to obtain evidence of Cuban citizenship from the Cuban Interests Section in Washington DC? Some in CIS and at DOS speculate that the consular officer's document is evidence of Cuban citizenship at birth, but that a document from the Cuban Interest Section is evidence of Cuban citizenship at the time of issuance. The odd thing about that is that no one knows anything about how or if Cuban citizenship can be lost.

The issue stated in this request was how Cuban citizenship could be terminated. We responded in Report 2004-01259, *Loss of Cuban Citizenship* that the Cuban Constitution provides that “Cuban citizenship is lost by becoming a citizen of a foreign country.” Although Mr. Grissom's request did not include a specific question about what constitutes evidence of citizenship, we also stated:

A Cuban birth certificate issued by a Cuban consulate proves that the bearer of such a document is a Cuban citizen. However, a Cuban passport is the document that verifies the identity and Cuban nationality of the bearer outside Cuba (footnotes omitted).

In light of this language from Report 2005-01947, the statement asserting that a Cuban birth certificate issued by a Cuban consulate proves that the bearer is a Cuban citizen is a likely source of confusion.

It should be noted that this particular statement cited articles 14 (ch), 20 and 31 of Law 51 concerning the Civil Status Registry in Cuba. Article 14 (ch) of Law 51 provides that Cuban consular offices are part of the Civil Status Registry (CSR). The CSR is a network of Cuban government offices that keep records relating to matters such as citizenship, birth, marriage, decease, and any other fact or event that affects the civil status of Cuban individuals.<sup>1</sup> In addition, article 20 of Law 51 provides that Cuban consular offices will register facts and events related to the civil status of Cubans and their children abroad. Finally, article 31 of Law 51 provides that the records kept by the offices of the CSR are proof of the civil status of the individuals registered.

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<sup>1</sup> Ley 51 del Registro del Estado Civil (Law 51 on the Civil Status Registry), arts. 3 & 14 (ch).

Based on these provisions of Law 51 that were cited in Report 2004-01259, and the fact that the birth certificate described by Mr. Grissom specifically states that the bearer of such a document is a Cuban citizen, Report 2004-01259 stated that a birth certificate issued by a Cuban consulate proves that the bearer of such a document is a Cuban citizen. This statement only referred to the birth certificate described by Mr. Grissom and was not intended to apply to any other birth certificate that does not specifically state that the bearer is a Cuban citizen, such as the birth certificates submitted by Ms. Monica Henles.

**B. Report 2005-01947: Nationality & Citizenship**

Report 2005-01947 responded to a separate issue concerning Cuban citizenship. Ms. Monica Hesles submitted the following question:

The issue to be analyzed is whether individuals born outside of Cuba, to one (or both) Cuban parents can derive Cuban citizenship without a requirement to physically reside in Cuba for an established period of time.

We are aware that the Cuban constitution stipulates that children of Cuban parents born abroad are entitled to Cuban citizenship yet we also understand that there are certain physical presence requirements in order for citizenship to be conferred. Below are samples of individuals born outside of Cuba to only one Cuban parent. We would appreciate it greatly if your analysis would also include law on individuals born abroad of both Cuban parents.

Last, but not least, would you kindly also include in your research which official document(s) would be indicative that the Cuban government has conferred Cuban citizenship to a person born outside its borders.

Following is a synopsis of the two samples attached:

Case of [REDACTED]:

- Born in Venezuela on [REDACTED], to a Cuban father and Venezuelan mother
- Never resided in Cuba
- Seeking permanent resident status under the Cuban Adjustment Act as a “native or citizen” of Cuba.
- Obtained a Cuban “Certification of Birth” (Certificación de Nacimiento), issued by the General Consulate of Cuba in Venezuela, on [REDACTED].

Case of [REDACTED]:

- Born in Venezuela on [REDACTED], to a Cuban mother and Venezuelan father
- Never resided in Cuba
- Seeking permanent resident status under the Cuban Adjustment Act as a “native or citizen” of Cuba
- Obtained a Cuban “Certification of Birth” (Certificación de Nacimiento), issued by the Office of the Civil Registry in Havana, Cuba, on [REDACTED].

The issue stated in this request specifically focused on “whether individuals born outside of Cuba, to one (or both) Cuban parents can derive Cuban citizenship without a requirement to physically reside in Cuba for an established period of time.” We responded in Report 2005-01947, *Nationality & Citizenship* that the Constitution of the Republic of Cuba remains dispositive, but also included additional clarifying information from an official within the Cuban Ministry of Foreign Affairs, which provided in relevant part:

Individuals born outside Cuba to one parent who is a Cuban citizen are eligible to apply for citizenship. In order to apply for Cuban citizenship, individuals born outside Cuba to one Cuban parent are required to be physically present in Cuba for at least three months. The same standards

apply to individuals born outside Cuba to two parents who are both Cuban citizens (footnotes omitted).

### III. Birth Certificates Currently Issued by Cuban Consulates

Reports 2004-01259 and 2005-01947 reflect a response based on Constitutional and legal provisions available to us for our analysis and the current practice by the Cuban government revealed by a telephonic interview. Article 29(c) of the Constitution of the Republic of Cuba provides, in the vernacular and translated, as follows:

*ARTICULO 29. Son ciudadanos cubanos por nacimiento:*

....

*c) los nacidos en el extranjero de padre o madre cubanos, previo el cumplimiento de las formalidades que la ley señala;<sup>2</sup>*

....

*ARTICLE 29. Cuban citizens by birth are:*

....

*c) those born abroad, one of whose parents at least is Cuban, who have complied with the formalities stipulated by law;<sup>3</sup>*

It should be noted that this translation of article 29 (c) of the Cuban Constitution into English, as provided by the official web site of the Cuban Legislative Body, is, in our opinion, not entirely accurate. However, it is included in this report because it is the translation provided by the Cuban Legislative Body on its web site.

A more precise translation of article 29 (c) would be as follows:

*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;*

The official web site of the Cuban Ministry of Foreign Affairs further indicates that, at the present time, individuals born outside Cuba to one parent who is a Cuban citizen are allowed to register their birth in a Cuban consular office located in the country where the birth took place.<sup>4</sup> However, an official within a Cuban consulate in Mexico has explained that, currently, individuals born outside Cuba to one parent who is a Cuban citizen do not acquire Cuban citizenship automatically by registering their birth in a

<sup>2</sup> CONSTITUTION OF THE REPUBLIC OF CUBA, art. 29 (c), <http://www.parlamentocubano.cu> (last visited Jan. 19, 2006). The hyperlink in this footnote connects to the official web site of the Cuban Legislative Body.

<sup>3</sup> CONSTITUTION OF THE REPUBLIC OF CUBA (ENGLISH VERSION), ART. 29 (C), <http://www.parlamentocubano.cu/espanol/const.ingles> (last visited Jan. 19, 2006). The hyperlink in this footnote connects to the official web site of the Cuban Legislative Body.

<sup>4</sup> Servicios Consulares (Consular Services), [http://www.cubaminrex.cu/Consulares/inicio\\_consulares.asp](http://www.cubaminrex.cu/Consulares/inicio_consulares.asp) (last visited Dec. 1, 2005). The hyperlink in this footnote connects to the official web site of the Cuban Ministry of Foreign Affairs.

Cuban consulate and obtaining a birth certificate from the consulate.<sup>5</sup> This consular official also indicated that individuals born outside Cuba to one Cuban parent are currently required to be physically present in Cuba for at least three months in order to become eligible to apply for Cuban citizenship,<sup>6</sup> but she was either unable or unwilling to identify a law or regulation that codifies this practice. Similarly, no such law or regulation providing for this period of three months of physical presence in Cuba was located during the research conducted for this report.

However, an extensive research effort on this issue revealed that in 2004, the Cuban government submitted a report to the United Nations (UN) pursuant to resolution 1373 (2001) concerning counter-terrorism.<sup>7</sup> In this report, the Cuban government 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. 59/1987, 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.<sup>8</sup>

This information allowed us to locate decree 358, Citizenship Regulation,<sup>9</sup> enacted in 1944, but not its "supplementary provisions." Similarly, we were not able to find an updated version of decree 358. However, given that the Cuban government indicated to the UN in its 2004 report that decree 358 is one of the bodies of law that regulates Cuban citizenship, we bring to your attention articles 1, 2, 3 and 5 of the decree, as enacted in 1944, which regulate the process that individuals born outside Cuba to one Cuban parent must follow in order to apply for Cuban citizenship. Based upon our research, article 29 (c) of the Cuban Constitution and decree 358 are the only bodies of law cited by the Cuban government in its 2004 UN report that specifically address this issue.

Articles 1, 2, 3 (b) and 5 (4) of decree 358 provide, in the vernacular and translated, as follows:

**Vernacular:**

*ARTICULO 1. – La ciudadanía cubana se adquiere por nacimiento o por naturalización.*

*ARTICULO 2. – Todos los cubanos tienen el derecho de solicitar y obtener del Ministerio de estado el documento idóneo que acredite su calidad de ciudadanos cubanos, con el cumplimiento previo de los requisitos legales y reglamentarios correspondientes. Ese documento se denomina Certificado de Nacionalidad en los casos de cubanos por nacimiento y Carta de Ciudadanía en los casos de naturalización. Ambos documentos son únicos. No se podrá obtener de ellos más que un solo original.*

*ARTICULO 3. – Son cubanos por nacimiento:*

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<sup>5</sup> Telephone Conversation with Ms. Marisela Martínez, official with the Cuba consulate in Monterrey, Mexico (Oct. 21, 2005).

<sup>6</sup> *Id.*

<sup>7</sup> Fourth report of the Republic of Cuba to the Counter-Terrorism Committee of the Security Council, submitted pursuant to paragraph 6 of resolution 1373 (2001), S/2004/404, <http://www.un.org/Docs/sc/committees/1373/c.htm> (last visited Jan. 27, 2006). The hyperlink in this footnote connects to the UN Counter Terrorism Committee web site.

<sup>8</sup> *Id.* p. 18.

<sup>9</sup> Decreto 358, Reglamento de Ciudadanía [Decree 358, Citizenship Regulation], Official Gazette, Mar. 3, 1944.

....  
b). – *Los nacidos en territorio extranjero, de padre o madre cubanos, por el solo hecho de avecindarse aquéllos en Cuba.*

....  
**ARTICULO 5.** – *Se expedirá Certificado de Nacionalidad a los cubanos por nacimiento comprendidos en el apartado b) del artículo 3 de este Reglamento, previo el cumplimiento de los requisitos siguientes:*

....  
4) *Informe expedido por el Alcalde Municipal de su domicilio, si vive fuera de La Habana, acreditativo de su actual vecindad. Si residiere en el término municipal de La Habana el informe será rendido por el Capitán de la Policía a cuya demarcación correspondiere el domicilio del peticionario. El peticionario deberá hallarse realmente en Cuba (emphasis added).*

**Translated:**

ARTICLE 1. Cuban citizenship may be acquired by birth or by naturalization.

ARTICLE 2. All Cubans have the right to apply for and obtain from the Ministry of State a document that proves their Cuban citizenship, provided that applicable legal requirements previously are met. Cubans by birth will be granted a Certificate of Nationality and Cubans by naturalization will obtain a Citizenship letter. These documents are unique. Only one single original document will be issued.

ARTICLE 3. Cubans by birth are:

....  
b) those born abroad, to either a Cuban father or mother, provided that they (i.e., the individuals born abroad) reside in Cuba;

....  
ARTICLE 5. Cubans by birth described in article 3 (b) of this regulation will obtain a Certificate of Nationality, provided that the following requirements previously are met:

....  
4) If the applicant lives outside Havana, the Major of the municipality where the applicant lives will issue a report certifying that the applicant lives in such municipality. If the applicant lives in Havana, the report will be issued by the head of the police station closer to the domicile of the applicant. **The applicant must be really in Cuba (emphasis added).**

As shown above, 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. Decree 358, however, does not provide for the requirement of at least three months of physical presence in Cuba that a Cuban consular official in Mexico referenced. No law or regulation providing for this period of three months of physical presence in Cuba was located during the research conducted for this report.

#### IV. “Supplemental Provisions” of Decree 358, Citizenship Regulations

Given that decree 358 was published in the *Cuban Official Gazette* (i.e., a publication sponsored by the Cuban government where laws and regulations are published), it is conceivable that the supplemental provisions of decree 358 may have been published in the Gazette as well. However, there are a number of circumstances that prevent us from determining if this assumption is correct.

The *Cuban Official Gazette's* web site claims that a quarterly index listing laws, regulations, and other legal documents has been published “for years.”<sup>10</sup> However, the *Cuban Official Gazette's* web site provides indexes only for the years 1998 through 2003.<sup>11</sup> It does not provide information on indexes for other years. Furthermore, the Cuban government does not indicate when these quarterly indexes started to be published, so it is unclear if the indexes have been in print since 1944, the year that decree 358 was published.

In addition, the collection of *Cuban Official Gazettes* kept at the Law Library of Congress has several gaps, some of which span a few years. Under these circumstances, it is virtually impossible for us to verify whether an updated version of decree 358 and its “supplemental provisions” have been published in the *Official Gazette*.

#### V. Conclusion

An official with the Cuban Ministry of Foreign Affairs has indicated that individuals born outside Cuba to one parent who is a Cuban citizen are currently required to be physically present in Cuba for at least three months in order to become eligible to apply for Cuban citizenship. Furthermore, articles 3 (b) and 5 (4) of decree 358, Citizenship Regulation, as enacted in 1944, provide 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.

Accordingly, as a matter of Cuban constitutional law as it is currently implemented, birth certificates currently issued by Cuban consulates to individuals born outside Cuba to one parent who is a Cuban citizen are not evidence of Cuban citizenship, given that these individuals are currently required to be physically present in Cuba for at least three months in order to become eligible to apply for Cuban citizenship.

Prepared by Gustavo Guerra  
Foreign Law Specialist  
February 2006

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<sup>10</sup> Cuban Official Gazette, Reference Index, [http://www.gacetaoficial.cu/indice\\_referativo.htm](http://www.gacetaoficial.cu/indice_referativo.htm) (last visited Jan. 27, 2006). The hyperlink in this footnote connects to the Cuban Official Gazette's web site.

<sup>11</sup> *Id.*

Appendix D



**THE LAW LIBRARY OF CONGRESS**  
GLOBAL LEGAL RESEARCH CENTER

March 31, 2017  
LL File No. 2017-014684  
Request No. 449

Dear Ms. Smith:

In response to your request of February 27, 2017, for information on whether, under Cuban law, a child may acquire Cuban citizenship from a stepparent, we are providing the following information.

You explained that the individual in question is a Nicaraguan citizen and national, born in Nicaragua to Nicaraguan parents. His mother married a Cuban citizen. In 2000, the Cuban stepfather filed a registration with the government of Nicaragua to have the child “recognized” as his own. The child in 2010 acquired a Cuban birth certificate issued by the country’s Civil Registrar for Deeds and Acts of Cubans abroad, with his stepfather listed as his father. The issue is whether this child (who has never been to Cuba), with the acquisition of the Cuban birth certificate, also acquired Cuban citizenship.

On this issue, we note that the website of the Cuban Embassy in Nicaragua indicates that individuals born outside Cuba to Cuban parents may request that their birth be registered with the Cuban government, but such registration does not mean that the requestor automatically acquires Cuban citizenship, as citizenship is obtained by complying with applicable requirements established by the Citizenship Law from 1944. (*Transcripción de Nacimiento*, EMBAJADA DE CUBA EN NICARAGUA: SERVICIOS CONSULARES [*Registration of Birth*, CUBAN EMBASSY IN NICARAGUA: CONSULAR SERVICES], <http://www.cubadiplomatica.cu/nicaragua/ServiciosConsulares.aspx#TranscripcionNacimiento> (last visited Mar. 31, 2017), archived at <https://perma.cc/9R6J-9JZU>.)

Another website maintained by Cuba’s Ministry of Foreign Affairs further explains that registration with the Cuban government of the birth of an individual that took place abroad to a Cuban parent or parents means that the individual may acquire Cuban citizenship after complying with applicable requirements, including staying in Cuban territory from three to six months. (*Transcripción de Nacimiento*, EMBAJADA DE CUBA EN ECUADOR: SERVICIOS CONSULARES, <http://www.cubadiplomatica.cu/ecuador/ServiciosConsulares.aspx#TRNAC> (last visited Mar. 31, 2017), archived at <https://perma.cc/B3KD-3H7A>.)

This website also indicates that children of Cuban citizens born abroad must apply for Cuban citizenship pursuant to applicable requirements provided by article 29-C of the Cuban Constitution and Decree 358 (the 1994 Citizenship Regulation) in order to get a Cuban passport (among other requirements), even if they already have a birth certificate issued by the Cuban

Lindsay A. Smith

March 31, 2017

government. (*Renovación del Pasaporte Ordinario*, EMBAJADA DE CUBA EN ECUADOR: SERVICIOS CONSULARES [*Renewal of Ordinary Passport*, CUBAN EMBASSY IN ECUADOR: CONSULAR SERVICES], [http://www.cubadiplomatica.cu/ecuador/ServiciosConsulares.aspx#PASAPORTE\\_RENOVACION](http://www.cubadiplomatica.cu/ecuador/ServiciosConsulares.aspx#PASAPORTE_RENOVACION) (last visited Mar. 31, 2017), archived at <https://perma.cc/WS4C-UKA8>.)

Article 29-C of the Cuban Constitution provides that individuals who are born abroad to a Cuban father or mother are Cuban citizens by birth, provided that applicable requirements as provided by law have been previously complied with. (CONSTITUCIÓN DE LA REPÚBLICA DE CUBA art. 29-C, GACETA OFICIAL [G.O.] [OFFICIAL GAZETTE], Jan. 31, 2003, 2015 edition, available on the website of Cuba's *Organización Nacional de Bufetes Colectivos* [*National Organization of Collective Law Firms*], at <http://www.onbc.cu/uploads/media/page/0001/01/d6ce6bbdc7a32d25261065ac152ebaf1d7334be.pdf>, archived at <https://perma.cc/MD3F-UUTW>.)

Decree 358, the Citizenship Regulation, provides that Cubans have the right to apply for and obtain a document that proves their Cuban citizenship provided that applicable legal requirements have been previously met. (Decreto 358, Reglamento de Ciudadanía [Decree 358, Citizenship Regulation] (as originally enacted), art. 2, G.O., Mar. 3, 1944.)

The Regulation provides a list of individuals who are Cubans by birth, including those born abroad to either a Cuban father or mother, provided that the individuals born abroad reside in Cuba. (*Id.* art. 3-b.) It also provides that Cubans by birth described in article 3(b) of this Regulation may obtain a Certificate of Nationality provided that a number of requirements have been previously met, including that the applicant is actually in Cuba (presumably at the time of application for citizenship, although the regulation does not specifically say so). (*Id.* art. 5(4).) It is unclear whether these requirements provided by Decree 358 as originally enacted have been amended, as an updated version of this decree could not be located.

Neither article 29 of the Cuban Constitution nor Decree 358 appear to include rules specifically addressing the issue of whether Cuban citizenship may be acquired by stepchildren or adopted children who have never been to Cuba by obtaining a birth certificate from the Cuban government showing that they are the actual children of a Cuban stepfather or adoptive father.

If you have further questions concerning this issue, please call me at [REDACTED] or email me at [REDACTED]. We hope this information is helpful.

Sincerely,

Gustavo Guerra

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[REDACTED]  
Date: 2017.03.31 17:39:18 -0400

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