



AD

U.S. Department of Justice

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy.

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



15 AUG 2002

FILE: [Redacted]

Office: Miami

Date:

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)

IN BEHALF OF APPLICANT: [Redacted]

Public Copy

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 Service 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Peru 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 Act provides, in pertinent 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, 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 provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

The district director determined that the applicant was not eligible for adjustment of status as the spouse of a native or citizen of Cuba pursuant to section 1 of the Act of November 2, 1966, because her spouse passed away on December 25, 2001. The district director, therefore, denied the application.

In response to the notice of certification, counsel asserts that the applicant met all the requirements of the Cuban Adjustment Act because she had been present in the United States for the requisite time period, she was inspected and admitted, she was not inadmissible for any of the enumerated grounds, and she was living with her husband at the time of filing such application for adjustment and until the time of his death. He further asserts that the Service should look at 8 C.F.R. 204.2(b)(1) for guidance in this area as it is the closest section to the facts in this matter in that the section allows a self-petition for a spouse of a United States citizen so long as they were married for two years and not separated at the time of his death.

8 C.F.R. 204.2(b), however, pertains to petition by widow or widower of a United States citizen. The applicant's spouse, in this case, was not a citizen of the United States. The applicant filed an application for adjustment of status as the spouse of a native or citizen of Cuba pursuant to section 1 of the Cuban Adjustment Act. This application is adjudicated accordingly.

The record reflects that on April 19, 2001, in Miami, Florida, the applicant married [REDACTED] a native and citizen of Cuba and a lawful permanent resident of the United States. Based on that marriage, on April 28, 2001, the applicant filed for adjustment of status under section 1 of the Cuban Adjustment Act. The record of proceeding contains a copy of Mr. [REDACTED] death certificate reflecting that he passed away on December 25, 2001.

Although the provisions of section 1 of the Act is applicable to the spouse or child of an alien described in the Act, it has been held in Matter of Bellido, 12 I&N Dec. 369 (Reg. Comm. 1967), that an applicant, who neither a native or citizen of Cuba nor is residing with the Cuban citizen spouse in the United States, is ineligible for adjustment of status pursuant to section 1 of the Act. The applicant's spouse was deceased on December 25, 2001; therefore, the applicant was not residing with her spouse. Further, no petitionable relationship existed between the applicant and her spouse since his death.

The applicant, therefore, does not qualify for the benefit sought. The applicant was offered an opportunity to submit evidence in opposition to the district director's findings. No additional evidence has been entered into the record. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.