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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

FILE [redacted] Office: Miami Date: JUN 24 2002

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 which 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 which 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 which 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, 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 case will be remanded to the director for further action.

The applicant is a native and citizen of Nicaragua 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 did not qualify for adjustment of status as the spouse of a lawful permanent resident because her spouse's application for permanent residence under section 1 of the Cuban Adjustment Act had been denied. The district director, therefore, denied the application.

In response to the notice of certification, counsel asserts that the Cuban Adjustment Act does not require that the Cuban spouse adjust his status to that of a lawful permanent resident under this Act. He states that section 1 of the Cuban Adjustment Act only requires that the spouse of a Cuban national has been inspected and admitted or paroled into the United States and has been physically present in the United States for at least one year.

The record reflects that on July 22, 1996, at Coral Gables, Florida, the applicant married [redacted] a native and citizen of Cuba. Based on that marriage, on November 14, 2000, the applicant filed for adjustment of status under section 1 of the Cuban Adjustment Act.

The district director denied the application after determining that the adjustment of status application of the applicant's Cuban spouse had been denied based on criminal convictions.

 [redacted]

The Board, in Matter of Quijada-Coto, 13 I&N Dec. 740 (BIA 1971), held that adjustment of status to that of a permanent resident pursuant to the provisions of the Act of November 2, 1966, is not available to the spouse of an alien described in section 1 of the Act, where the alien himself had been denied adjustment of status under the Act.

However, as presently constituted, the case cannot be properly adjudicated as the record of proceeding does not contain any evidence to show that [redacted] was in fact denied adjustment of status under section 1 of the Act. The case will, therefore, be remanded so that the district director may review the record and include in the record of proceeding a copy of the decision denying Mr. Apecheche's application for adjustment of status. The district director shall enter a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner, Examinations, for review.

ORDER: The district director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.