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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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



FILE: [Redacted]

Office: Miami

Date:

30 OCT 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: Self-represented

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, Director
Administrative Appeals Office

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

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 acting 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 she had not been residing with her Cuban spouse. The acting district director, therefore, denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

The record reflects that on January 15, 1999 at [REDACTED] the applicant married [REDACTED] a native and citizen of Cuba and a lawful permanent resident of the United States. Based on that marriage, on March 13, 2001, the applicant filed for adjustment of status to permanent residence under section 1 of the Cuban Adjustment Act.

At the applicant's scheduled Service interview regarding her application for adjustment of status, the applicant stated that her Cuban spouse had been arrested and incarcerated since December 8, 1999, and it is not known when he will be released.

The acting district director determined that although the Service recognizes that the applicant's separation from [REDACTED] was due to circumstances beyond her control, the fact remains that they have not been residing together for over two years, and at this

time, there is no certainty that they will be residing together in the near future.

Although the provisions of section 1 of the Act are 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 is not a native or citizen of Cuba and is not 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 and her Cuban spouse have not been residing together for over two years. She is, therefore, ineligible for adjustment of status pursuant to section 1 of the Act.

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that she is eligible for adjustment of status. She has failed to meet that burden. The decision of the acting district director to deny the application will be affirmed.

This decision is without prejudice to the filing of a new application for permanent residence once the applicant and her spouse are again residing together.

ORDER: The acting district director's decision is affirmed.