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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

AAO

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D. C. 20536



AUG 26 2003

FILE:  Office: Miami Date:

IN RE: Applicant: 

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF APPLICANT:


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 Bureau of Citizenship and Immigration Services (Bureau) 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.

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 Administrative Appeals Office for review. The acting district director's decision will be affirmed.

The applicant is a native and citizen of Venezuela 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. 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 did not qualify as the stepchild of a lawful permanent resident who adjusted under section 1 of the CAA. 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 the petitioner was born in Venezuela on December 30, 1981. On June 24, 2002, the applicant's mother married [REDACTED] a native and citizen of Cuba and a lawful permanent resident of the United States, having adjusted his status under section 1 of the CAA. The acting district director noted that the applicant was 20 years of age at the time her mother married [REDACTED]. Therefore, she did not qualify as the stepchild of a Cuban, pursuant to section 1 of the CAA.

Pursuant to section 101(b) of the Act, 8 U.S.C. § 1101(b), the term "child" means an unmarried person under 21 years of age. "Child" is also defined in section 101(b)(1)(B) of the Act to mean a stepchild, whether or not born out of wedlock, provided the child had not reached the age of 18 years at the time the marriage creating the status of stepchild occurred.

The record reflects that the applicant turned 18 years of age on December 30, 1999, more than two years before her mother married her Cuban spouse. The applicant, therefore, does not meet the definition of a "stepchild" as provided in section 101(b)(1)(B) of the Act. Therefore, the benefits of section 1 are not available to the applicant.



Accordingly, the applicant is ineligible for adjustment of status to permanent residence, pursuant to section 1 of the Act of November 2, 1966. The decision of the acting district director to deny the application will be affirmed.

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