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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[REDACTED]

FILE: [REDACTED]

Office: MIAMI, FLORIDA

Date: DEC 22 2003

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)

ON BEHALF OF APPLICANT:

[REDACTED]

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The acting district director's decision will be affirmed.

The applicant is a native and citizen of Bolivia 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, (now the Secretary of Homeland Security, (Secretary)), 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 CAA of November 2, 1966, because he entered into the marriage for the primary purpose of circumventing the immigration laws of the United States. See *Acting District Director Decision* dated July 18, 2003.

The record reflects that on August 22, 2002 at Naples, Florida, the applicant married [REDACTED] a native and citizen of Cuba whose immigration status was adjusted to that of a lawful permanent resident of the United States, pursuant to section 1 of the CAA. Based on that marriage, on September 27, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

On June 19, 2003, during his interview for adjustment of status, Ms. Reyes rendered a written statement admitting that she does not live with the applicant and that all was done through a friend who paid her \$500 a month to help the applicant. The Citizenship and Immigration Services, CIS, officer conducting the interview noted that Ms. [REDACTED] did not know the applicant's present address and that the address listed on the applicant's Form G-325 was her previous address and not his. In addition it is noted that the individual referred to in the signed statement as the friend who helped her, is the mother of the applicant's

one-year-old child.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the acting district director's findings. In response to the notice of certification, counsel asserts that the applicant's spouse was unaware of what she was signing and that she was told that the document she signed was a document stating that she is aware of the penalties for entering into a sham marriage. Based on the notes in the file the AAO concludes that Ms. [REDACTED] was asked questions regarding who arranged the marriage and the applicant's current address. Counsel submitted statements from the applicant and his spouse stating that their marriage is real and that they live together. In addition counsel submitted numerous affidavits from family and friends attesting to the fact that the couple is married and reside together.

The attorney's assertions that Ms. [REDACTED] was not aware of what she was signing on June 13, 2003 is not persuasive since the statement was written in Spanish, Ms. [REDACTED] native language.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the acting district director's decision will be affirmed.

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