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

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

AA



FILE:



Office: Miami

Date:

NOV 05 2003

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: Self-represented

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 Citizenship and Immigration Services (CIS) 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 The acting district director's decision will be withdrawn, and the application will be approved.

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 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 established that her marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States. The acting district director, therefore, denied the application.

In response to the notice of certification, the applicant submits a statement and additional evidence.

The record reflects that on March 27, 2002, at Miami, 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 April 24, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

The acting district director maintained that during a review of the applicant's Service file, it was noted that her spouse (Mr. [REDACTED]) is presently on probation for grand theft, and that the records of the Probation and Parole Services of the Florida Department of Corrections indicate that Mr. [REDACTED] listed his wife as [REDACTED] and that he lived at [REDACTED] with his wife and three children, not at [REDACTED] which both the applicant and Mr. [REDACTED] stated during the adjustment interview. The acting district director further noted that on his probation records Mr. [REDACTED] stated that he lived with [REDACTED] and his three children. On November 8, 2002, a Service officer called a telephone number listed for the 3737 SW 89th Court residence and Mr. [REDACTED] answered the telephone, confirming his identity.

Citing *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983), and *Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975), the acting district director concluded that based on the facts listed above, and the lack of material evidence presented, the applicant had not established that her marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States. The acting district director, therefore, denied the application.

On notice of certification, the applicant states that she married Mr. [REDACTED] in March 2002 and they moved to their new residence at [REDACTED]. She further states that they subsequently updated all the information on their bills, opened joint bank accounts, and changed the address on their driver's licenses, however, the one address they forgot to update was the probation officer's records. The address on the probation records was [REDACTED] where his three children currently live with their biological mother, [REDACTED] who also was referred to as Mr. [REDACTED] wife. The applicant explains that the reason the address of his children is listed as the contact address for Mr. [REDACTED] is because that is where his children live and have lived for the past nine years. She further explains that Mr. [REDACTED] and the mother of his children agreed that he would pick up the children from school every day between 2:30 p.m. and 3:30 p.m., and he would drop them off at the [REDACTED] address and hand the children over to [REDACTED] aunt who lives with Isabel and the children. She states that Mr. [REDACTED] was waiting for the aunt to return, as he could not leave the minor children alone without supervision, when he received the telephone call from the Service officer. However, once the officer confirmed that he was Jacinto Vasquez, the officer hung up the telephone. The applicant

states that it is totally excusable why Mr. [REDACTED] was at that address at the time of the call. She added that her husband drops off his children every Monday through Friday, and again on Sunday when he takes the children out to have some quality time with their father. The applicant submits:

1. Affidavits from [REDACTED] and [REDACTED] indicating that they are friends of the applicant and Mr. [REDACTED] that they attended the couple's wedding, that the couple has lived at [REDACTED] since the wedding, and that they frequently visit the couple at their home.

2. Several photographs of the applicant and Mr. [REDACTED] including photos of the wedding ceremony.

3. A copy of a lease agreement, signed by the applicant and Mr. [REDACTED] for the [REDACTED] residence for the period commencing February 2002 to February 2003.

4. Copies of joint bank account statements for the period September 16, 2002 to March 13, 2003, and a joint VISA credit card.

5. Copies of Bell South monthly statements addressed to the applicant and Mr. [REDACTED] (the names on the bill are misspelled [REDACTED] at their [REDACTED] residence, for the period September 20, 2002 to December 20, 2002.

6. Copies of Florida Power and Light Company billings addressed to Mr. [REDACTED] at the [REDACTED] residence.

7. Copies of envelopes addressed to Mr. [REDACTED] at the [REDACTED] residence from the Clerk, Circuit/County Courts, Miami, Florida, postmarked December 20, 2002; and from four different attorneys all postmarked December 10, 2002.

The acting district director noted that at the interview regarding the application for permanent residence on November 5, 2002, the applicant and her spouse were each placed under oath and questioned regarding their domestic life and shared experiences. The record of proceeding, however, does not contain evidence that the acting district director found any discrepancies encountered during this interview.

The applicant's explanation regarding the basis of the acting district director's findings, and the evidence furnished to establish that the applicant's marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States, appear to be credible.

As the only ground of ineligibility present in this case has now been overcome, it is concluded that the applicant has established that she is in fact eligible for adjustment of status to permanent residence, pursuant to section 1 of the Act of November 2, 1966, and warrants a favorable exercise of discretion. Accordingly, the acting district director's decision will be withdrawn, and the application will be approved.

ORDER: The acting district director's decision is withdrawn.
The application is approved.