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

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



FILE



Office: Miami

Date: NOV 13 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:



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 (AAO) for review. The AAO affirmed the decision of the acting district director to deny the application. The matter is now before the AAO on a motion to reopen. The motion will be granted, and the previous decision of the AAO will be affirmed.

The applicant is a native and citizen of Colombia 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.

The acting district director denied the application on June 10, 2002, after determining 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 he had not established that his marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States.

Upon review of the record of proceeding, the AAO noted that the applicant neither furnished additional evidence, nor refuted or explained the basis of the contradictory testimony given at the Service interview. The AAO, therefore, affirmed the acting district director's decision to deny the application on October 30, 2002.

On motion, counsel asserts that on July 11, 2002, he timely filed a legal brief with extensive supporting documentation on behalf of the applicant, rebutting the facts found by the acting district director. He states that it appears from the AAO decision dated October 30, 2002, that the AAO never received the legal brief and supporting documentation for consideration. Counsel, therefore, requests that the AAO consider the attached legal brief and supporting documentation. Counsel further asserts that the denial letter contains many errors and misstatements of facts as to the questions and answers given during the interview. He states that it is important to note that the examiner who interviewed the applicant and his wife was not the same individual who prepared the Form I-290C denial of the application. Therefore, he asserts that the entire Form I-290C is hearsay, and it is understandable that there would be many errors and misstatements of fact contained in the denial since the examiner who prepared the denial letter did not conduct the interview and had never seen the applicant and his wife.

Counsel contends that in Part II of the denial letter, the Examiner misstated and mischaracterized by omission the documentation

provided to the Service to supplement the application for permanent residence. He states that the applicant also provided dozens of wedding photos and a wedding video that included approximately 25 people in attendance from both the bride's and the groom's families. He further states that this evidence was never mentioned in the decision nor considered by the examiner in weighing the evidence presented. In addition to the wedding photos, the applicant also provided photos taken on their honeymoon subsequent to their wedding, that counsel claims the examiner failed to mention or consider. Counsel further asserts that the applicant had difficulty in understanding the interviewer's questions, and that the questions posed by the interviewer were not clear and precise and often times were vague and misleading.

Counsel submits several photographs, including the couple's wedding photos. It is not disputed that the applicant and his spouse were married. However, the weight given the photographs, the joint bank account, and joint insurance policy furnished by the applicant is diminished by the discrepancies encountered at the Service interview on March 20, 2002. Further, there is no evidence in the record to establish that the applicant had difficulty in understanding the interviewer's questions. Had the applicant advised the interviewer of this fact, it could have been resolved during the interview.

Furthermore, counsel's assertion that the denial letter contains many errors and misstatements of facts as to the questions and answers given during the interview is not persuasive. While it is true that the examiner who interviewed the applicant and his wife was not the same individual who prepared the Form I-290C denial of the application, the Service does not require that the same interviewer prepare the Service denial. The record contains the interviewer's written notes of the entire interview. Therefore, counsel's claim that the Form I-290C is hearsay is without merit. Additionally, while counsel claims that the decision contains many errors and misstatements of fact, no evidence was furnished to corroborate this claim. Nor did the applicant and his spouse submit statements explaining the discrepancies noted by the officer during their interview. The questions posed to the applicant and his spouse during their interview are all crucial in establishing that there is a bona fide marital relationship, and that the marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).



The applicant has failed to overcome the findings of the acting district director. Accordingly, the decision of the AAO dated October 30, 2002, will be affirmed.

ORDER: The decision of the AAO dated October 30, 2002, is affirmed.