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

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

[Redacted]

FILE: [Redacted] Office: Texas Service Center

Date: OCT 1 - 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)

IN BEHALF OF APPLICANT:

[Redacted]

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 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was originally denied by the Director, Texas Service Center, who certified his decision to the Administrative Appeals Office (AAO) for review. The director's decision was withdrawn and the case was remanded for further action. The Acting District Director, Miami, Florida, has again denied the application and certified his decision to the AAO for review. The acting district director's decision 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. 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 Texas Service Center director denied the application on July 20, 2000, after determining that the applicant did not qualify for adjustment of status under section 1 of the Act of November 2, 1966, because she is not a native or citizen of Cuba.

The AAO reviewed the record of proceeding and noted that the applicant married [REDACTED] a native and citizen of Cuba, on January 5, 1998, and based on that marriage, the applicant filed for adjustment of status pursuant to section 1 of the CAA. The AAO noted that although Mr. [REDACTED] was paroled into the United States, there is no evidence in the record to establish whether Mr. [REDACTED] had applied for adjustment under section 1 of the CAA and the application is pending or had been denied, or whether Mr. [REDACTED] was eligible for adjustment under section 1 of the CAA. The AAO further noted that there is no evidence in the record that the director had requested that the applicant submit additional evidence to establish Mr. [REDACTED] eligibility under section 1 of the CAA. The AAO, therefore, remanded the case to the director for further action on June 18, 2001.

On July 31, 2001, the Texas Service Center forwarded the case to the Miami district office in order that the applicant could be interviewed regarding her application. On January 30, 2002, the applicant was requested to appear for an interview at the Miami

office on March 13, 2002. The applicant failed to appear for the interview. On May 26, 2002, the Miami acting district director denied the application after determining that Mr. [REDACTED] had never applied for adjustment of status under section 1 of the CAA.

In support of his decision, the acting district director quoted an unpublished AAO decision that indicated that an applicant must be the spouse of an alien who had been admitted into the United States under section 1 of the CAA. In its decision, the AAO cited *Matter of Milian*, 13 I&N Dec. 480 (Acting Reg. Comm. 1970). The AAO has determined that the interpretation of *Matter of Milian* as found in the quoted decision was incorrect. An applicant need only show that his or her Cuban spouse meets all the criteria of the CAA, not that the Cuban spouse was admitted to the United States under section 1 of the CAA.

To be eligible for adjustment of status under section 1 of the CAA, an alien must show that he/she is a native or citizen of Cuba, he/she was inspected and admitted or paroled into the United States, he/she has been physically present in the United States for at least one year, and that he/she is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. See *Matter of Masson*, 12 I&N Dec. 699 (BIA 1968).

The statute clearly states that the provisions of section 1 of the CAA shall be applicable to the spouse and child of any alien described in this subsection. While the record shows that [REDACTED] is a native of Cuba, that he was inspected and paroled into the United States, and that he appears to have been physically present in the United States for at least one year, the record, as presently constituted, does not contain evidence to establish that [REDACTED] is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

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. Therefore, the decision of the acting district director to deny the application will be affirmed.

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