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U.S. Department of Homeland Security

Citizenship and Immigration Services

**Identifying data deleted to
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invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass, 3/F

425 I Street, N.W.

Washington, D.C. 20536

[REDACTED]

FILE: [REDACTED]

Office: Miami

Date: SEP 30 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]

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 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 Peru 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, pursuant to section 1 of the Act of November 2, 1966, because there was no evidence that his spouse has been recognized by the Cuban government as a citizen of Cuba. 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 applicant's spouse [REDACTED] was born in Venezuela on November 22, 1978, to a Cuban mother and a Norwegian father. Ms. [REDACTED] status was adjusted to that of a lawful permanent resident as of November 11, 1995, under section 1 of the CAA, as the minor child of a native of Cuba (CU-7). On January 30, 1998, at Coral Gables, Florida, the applicant married Ms. [REDACTED]. Based on that marriage, on June 28, 2000, the applicant

filed an application for adjustment of his status to permanent residence under section 1 of the CAA.

Article 29 of the Constitution of the Republic of Cuba reads, in part:

Those considered Cuban citizens by birth are:

(c) those born outside of Cuba of Cuban father or mother, provided that they comply with the formalities of the law.

The record reflects that Ms. [REDACTED] status was adjusted to that of a CU-7, as the child of an alien described in section 1 of the CAA. The record, as presently constituted, reflects that Ms. [REDACTED] is a native and citizen of Venezuela. There is no evidence in the record that Ms. [REDACTED] complied with the formalities stipulated by Article 29 of the Constitution of the Republic of Cuba in order to be considered a Cuban citizen.

Accordingly, the applicant is ineligible for adjustment of status to permanent residence, pursuant to section 1 of the CAA. The applicant was offered an opportunity to submit evidence in opposition to the acting district director's findings. No additional evidence has been entered into the record of proceeding.

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 he is eligible for adjustment of status. He has failed to meet that burden. The decision of the acting district director to deny the application will be affirmed.

This decision is without prejudice to the filing of a Relative Immigrant Visa Petition (Form I-130) by the applicant's spouse on behalf of the applicant.

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