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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE:

[Redacted]

Office: MIAMI, FLORIDA

Date:

APR 13 2004

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 of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The 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. The CAA 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 she entered into the marriage for the primary purpose of circumventing the immigration laws of the United States. *See District Director Decision* dated November 22, 2003.

The record reflects that on September 3, 2002, at Coral Gables, 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 19, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

On June 19, 2003, the applicant and her spouse (Mr. [REDACTED]) appeared before Citizenship and Immigration Services, (CIS) for an interview regarding the application for permanent residence. At that time it was decided that the case be continued and that the couple be scheduled to appear for a full marriage interview on November 14, 2003.

On November 14, 2003, the applicant and Mr. [REDACTED] were each placed under oath and questioned separately regarding their domestic life and shared experiences. Citing *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983), and *Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975), the district director maintained that when there is reason to doubt the bona fides of a marital relationship, evidence must be presented to show that the marriage was not entered into solely for the purpose of circumventing the immigration laws of the United States. The district director determined that the discrepancies encountered at the interview, and the lack of material evidence presented, strongly suggest that the applicant and her spouse entered into a marriage for the primary purpose of circumventing the immigration laws of the United States.

Additionally, on November 14, 2003, after the applicant was advised of the penalties for entering into a fraudulent or sham marriage she admitted in writing and under oath, that she entered into the marriage with the applicant in order to acquire permanent residency. The applicant stated that she had paid Mr. [REDACTED] \$2,500 at the time of their marriage and promised Mr. [REDACTED] another \$2,500 when she received her permanent residency. The applicant further admitted that her marriage to Mr. [REDACTED] was in fact fraudulent that Mr. [REDACTED] lives with his girlfriend in Hialeah, Florida.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the district director's findings. The applicant submits an affidavit stating that she lives with Mr. [REDACTED] and asserts that the discrepancies during the interview were due to fear and tiredness since both she and Mr. [REDACTED] were working until 4 a.m. that day. Additionally, the applicant submits affidavits from friends and neighbors who attest that the applicant and Mr. [REDACTED] are married and live together. No explanation was given regarding the applicant's sworn statement.

A review of the recently submitted documentation, and the documentation in the record, when considered in its totality, cannot overcome the discrepancies that were encountered during the interview on November 14, 2003.

Based on the discrepancies during the interview and the sworn statement by the applicant it is concluded that the applicant's marriage was entered into for the primary purpose of circumventing the immigration laws of the United States. Additionally, the applicant is not a native or a citizen of Cuba, nor is she residing with her Cuban citizen spouse in the United States. She is, therefore, ineligible for adjustment of status pursuant to section 1 of the CAA.

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. The applicant has failed to meet that burden.

The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.