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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE: [REDACTED] Office: MIAMI, FLORIDA Date: **APR 20 2014**

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 PETITIONER: SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

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

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 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 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 his marriage was not considered valid under the immigration laws. *See District Director's Decision* dated January 4, 2004.

The record reflects that on February 19, 2002, at Miami Beach, Florida, the applicant married [REDACTED] 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 May 31, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

The record reflects that the applicant's marriage to Ms. [REDACTED] is, in fact, her second one. No divorce decree was presented as evidence that Ms. [REDACTED] prior marriage had been terminated. The applicant submitted a death certificate for Ms. [REDACTED] prior husband. The death certificate shows that Ms. [REDACTED] first husband died on November 3, 2002, over eight months after her marriage to the applicant. The district director determined that Ms. [REDACTED] first marriage had not been terminated and therefore the applicant's marriage could not be considered valid under immigration law. The application for adjustment of status was denied accordingly.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the district director's findings. The applicant submits the previously provided death certificate and a new marriage certificate showing that he remarried Ms. [REDACTED] on June 11, 2003, at Miami Dade, Florida. This new marriage does not alter the fact that he was ineligible for the benefit at the time of filing. An applicant must establish eligibility at the time of filing; an application cannot be approved at a future date after the applicant becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

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. Based on his application of May 31, 2002, the applicant has failed to meet that burden.

This decision, however, is without prejudice to the filing of a new application for adjustment of status, along with supporting documentation and the appropriate fee, if the applicant establishes a valid marriage with Ms. Regueira.

ORDER: The district director's decision is affirmed.