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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:

IN RE:

Applicant:

[Redacted]

APR 23 2004

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

**PUBLIC COPY**

ON BEHALF OF PETITIONER:

[Redacted]

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

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prevent clearly unwarranted  
invasion of personal privacy

**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 Acting District Director's decision was affirmed by the AAO on October 30, 2002. The AAO affirmed its prior decision on November 13, 2003, subsequent to a motion to reconsider. The matter is now before the AAO on a second motion to reopen. The motion will be dismissed and the AAO decision dated November 13, 2003, will be affirmed.

The applicant is a native and citizen of Columbia 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 acting 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 he entered into the marriage for the primary purpose of circumventing the immigration laws of the United States. *See Acting District Director Decision* dated June 10, 2002. The decision was affirmed by the AAO on October 30, 2002, and on November 13, 2003 based on a motion to reopen.

In his first motion to reopen, counsel asserted that the denial letter contained many errors and misstatements of facts as to the questions and answers given during the interview. Counsel stated that the examiner who interviewed the applicant and his wife was not the same individual who prepared the Form I-290C denial. Therefore, he asserted that the entire Form I-290C was hearsay and it is understandable that there would be many errors and misstatements of fact contained in the denial. Counsel stated 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 presented wedding photos and a wedding video as evidence that the marriage was valid. After careful review of all submitted documentation, and the documentation in the record, the AAO affirmed its prior decision and the decision of the acting district director to deny the application due to the discrepancies that were encountered during the interview on March 20, 2002.

In a second motion to reopen, counsel asserts that the interviewing officer had difficulty understanding the answers provided by the applicant and his spouse and attempts to explain some of the discrepancies that occurred during the interview and provided the same photos previously submitted and affidavits from friends and family verifying the validity of the applicant's marriage.

The regulation at 8 C.F.R. § 103.5(a) states in pertinent part:

- (a) Motions to reopen or reconsider. . .
  - (2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence.  
.....
  - (3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.
  - (4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

The AAO finds that in the motion to reopen no new information or evidence is submitted and counsel did not identify any legal error or misapplication of law in the previous AAO decision.

The issues in this matter were thoroughly discussed by the acting district director and the AAO in their prior decisions. In the motion to reopen counsel failed to provide any new evidence or set forth any new facts to be proved. Since no new issues have been presented for consideration, the motion will be dismissed.

**ORDER:** The motion is dismissed and the prior AAO decision is affirmed.