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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



FILE:



Office: MIAMI, FLORIDA

Date:

APR 23 2004

IN RE:

Applicant:



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:

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.

**PUBLIC COPY**

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

Robert P. Wiemann, Director  
Administrative Appeals Office

**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 Argentina 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 he entered into the marriage for the primary purpose of circumventing the immigration laws of the United States. *See District Director Decision* dated December 3, 2003.

The record reflects that on March 2, 2002, at West Palm Beach, 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 March 21, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

On December 17, 2002, the applicant and his spouse, Ms. [REDACTED] appeared before the Immigration and Naturalization Service (now 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 for a subsequent appointment to provide requested documentation.

The record contains a memorandum of investigation dated July 23, 2003. The memorandum shows that agents of the Immigration and Customs Enforcement conducted an investigation regarding the validity of the applicant's marriage with Ms. [REDACTED]. The report states that the investigators visited the applicant's place of residence and when they asked the applicant the whereabouts of Ms. [REDACTED] he replied that she was no longer his wife. Based on the investigation it was concluded that the applicant and his spouse do not reside together as husband and wife.

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 during the investigation, and the lack of material evidence presented, strongly suggest that the applicant and his spouse entered into a marriage for the primary purpose of circumventing the immigration laws of the United States.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the district director's findings. In response to the notice of certification, counsel submits a brief, pictures from the wedding ceremony, bank statements that the applicant had provided previously, copies of auto insurance statements and other correspondence showing both the applicant and his wife's names on the documents. In addition counsel submits an affidavit from the applicant and from the applicant's religious counselor.<sup>1</sup>

In the brief counsel asserts that the applicant's marriage was not entered into with the purpose of circumventing the immigration laws of the United States. Counsel states that as a result of Ms. [REDACTED] inability to become pregnant she began to develop physiological problems that led her to abusing the applicant and his children. Furthermore counsel states that Ms. [REDACTED] had an affair that escalated the collapse of the relationship between the applicant and her. In his affidavit the applicant states that his marriage was not entered into for immigration purposes and tries to explain why his ex-wife and child were at his residence the morning the investigators visited his house. In an affidavit dated December 22, 2003, the applicant's spiritual counselor states that he knows the applicant since June 2001 and that he knows that during the applicant's marriage with Ms. [REDACTED] she was having an affair and as a result of this affair the couple separated.

A review of the recently submitted documentation, and the documentation in the record, when considered in its totality, cannot overcome the conclusion of the investigation report of July 23, 2003.

Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that she is eligible for adjustment of status. Further, *Matter of Marques*, 16 I&N Dec. 314 (BIA 1977), held that when an alien seeks favorable exercise of the discretion of the Attorney General, it is incumbent upon him to supply the information that is within his knowledge, relevant, and material to a determination as to whether he merits adjustment. When an applicant fails to sustain the burden of establishing that he is entitled to the privilege of adjustment of status, his application is properly denied. Here, the applicant has not met that burden. Accordingly, the district director's decision will be affirmed.

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

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<sup>1</sup> Though an attorney, Ydelys Q. Forte, provided the brief, no G-28, Notice of Entry of Appearance by Attorney or Representative was included with the motion. The AAO will consider information provided in the brief, however, the attorney will not be sent a copy of the decision.