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

U.S. Citizenship and Immigration Services



FILE:



Office: MIAMI, FLORIDA

Date:

APR 26 2004

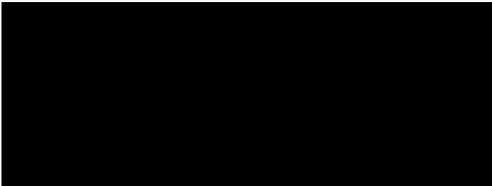
IN RE:

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:



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

**DISCUSSION:** The application was denied by the District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The AAO affirmed the decision of the district director to deny the application. The matter is now before the AAO on a motion to reopen. The motion will be granted and the previous decisions of the District Director and the AAO 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 he and his spouse are not residing together. The district director, therefore, denied the application. *See District Director's* decision dated June 9, 2003. On September 23, 2003, the AAO affirmed the district director's decision.

The record reflects that on January 14, 2002, at Cutleridge, 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 April 2, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

On May 19, 2003, Ms [REDACTED] informed the office of Citizenship and Immigration Services, (CIS) in writing that she and the applicant have been separated, she did not know his whereabouts and she no longer wants to continue with his adjustment case as they are no longer residing together as husband and wife.

On a motion to reopen counsel asserts that the applicant is eligible to adjust his status under section 1 of the CAA because he entered into the marriage in a good faith, his spouse throughout the course of their marriage psychologically abused him and therefore he should be considered for adjustment of status as a battered spouse. Additionally, counsel states that the applicant is eligible for adjustment of status because he was and remains married to a lawful permanent resident, he is eligible for immigration classification, he continues to live in the United States, he resided with the lawful permanent resident in the United States at the time of his application, he is a person of good moral character and his deportation would result in extreme hardship to himself.<sup>1</sup>

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<sup>1</sup> The criteria listed by counsel refers to eligibility under section 204(a)(1)(A)(iii) of the Act, relating to the battered spouse of a United States citizen or legal permanent resident. If the applicant wishes to be considered under that section of the Act he must file a petition on Form I-360. The current proceeding

Although the provisions of section 1 of the CAA are applicable to the spouse or child of an alien described in the CAA, it has been held in *Matter of Bellido*, 12 I&N Dec. 369 (Reg. Comm. 1967), that an applicant who is not a native or citizen of Cuba and is not residing with the Cuban citizen spouse in the United States, is ineligible for adjustment of status pursuant to section 1 of the CAA.

The applicant is not a native or a citizen of Cuba, nor is he residing with his Cuban citizen spouse in the United States. He 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 he is eligible for adjustment of status. The applicant has failed to meet that burden. Accordingly, the motion to reopen will be granted and the prior district director and AAO decisions will be affirmed.

**ORDER:** The prior district director and AAO decisions are affirmed.

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involves his application under the CAA and there is no exception for battered spouses who no longer reside with their spouse.