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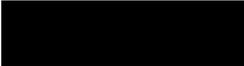


U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship
and Immigration
Services



FILE:



Office: MIAMI, FLORIDA

Date:

FEB 04 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.

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

Robert P. Wiemann, Director
Administrative Appeals Office

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 will be affirmed.

The applicant is a native and citizen of the Czech Republic 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. This Act 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 Act of November 2, 1966, because he did not establish the bonafides of his marriage. He also noted that as the applicant has a final order of removal, his application for adjustment should have been made with the Immigration Court. The district director, therefore, denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

The record reflects that on April 2, 2001, at Orlando, 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 June 23, 2001, the applicant filed for adjustment of status under section 1 of the CAA.

On July 24, 2003 the applicant and his spouse appeared before Citizenship and Immigration Services, (CIS) for an interview regarding the application for adjustment of status. On that date the applicant admitted in writing and under oath, that he and Ms. [REDACTED] are friends and that he married her in order to obtain permanent resident status.

The record further reflects that the applicant was placed in removal proceedings on July 18, 2000. The applicant was granted voluntary departure by an Immigration Judge on March 8, 2001 and ordered to depart the United States by July 7, 2001. He did not depart as ordered and therefore now has a final order of removal. This order means that the applicant is still in the jurisdiction of the court and the adjustment of status application filed before the District Director was improperly filed. In order to properly file the application for adjustment of status the applicant must file a motion to reopen his removal proceedings and file for adjustment before the Immigration Judge.

The applicant was offered an opportunity to submit evidence in opposition to the acting district director's findings. No additional evidence has been entered into the record.

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. He has failed to meet that burden.

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

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