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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: FEB 04 2004

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 APPLICANT:

[redacted]

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 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 Peru 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 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 September 3, 2003.

The record reflects that on March 10, 2002 at Miami, Florida, the applicant married 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 August 11, 2003, the applicant and his spouse (Ms appeared before Citizenship and Immigration Services, (CIS) for an interview regarding the application for permanent residence. The applicant and his spouse were each placed under oath and questioned separately regarding their domestic life and shared experiences. In addition, the record contains a memorandum of investigation dated August 28, 2003. The memorandum shows that agents of Immigration and Customs Enforcement conducted an investigation regarding the validity of the applicant's marriage with Ms 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 acting 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 acting district director determined that the discrepancies encountered at the interview, and the lack of material evidence presented, strongly suggest that the applicant and her 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 acting district director's findings. No additional evidence has been entered into the record.

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 acting district director's decision will be affirmed.

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