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U.S. Citizenship
and Immigration
Services



FILE:  Office: MIAMI, FLORIDA Date: FEB 06 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.

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 was affirmed. The matter is now before the AAO on a motion to reconsider. 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 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. 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 Act of November 2, 1966, because she entered into the marriage for the primary purpose of circumventing the immigration laws of the United States. *See Acting District Director Decision* dated November 12, 2002. The decision was affirmed by the AAO. *See AAO decision*, dated March 20, 2003.

The record reflects that on April 1, 2002 at Fort Lauderdale, Florida, the applicant married Ariel Otero, 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 11, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

On October 17, 2002 the applicant and his spouse were each placed under oath and questioned separately regarding their domestic life and shared experiences. 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 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 acting district director's findings. The applicant had provided no statement or additional evidence on notice of certification and the acting district director's decision was affirmed on March 20, 2003 by the AAO.

With her motion to reopen, the applicant submitted an affidavit from herself and her spouse stating that their marriage is a true and valid one. The applicant provided pictures from the wedding ceremony, numerous other showing the couple together, bank statements, cancelled checks, a residential lease and tax returns for the year 2002, all showing both the applicant and her husband's names on the documents. In addition the applicant submitted two affidavits from two individuals who know the couple and attest that the couple is married and reside together. The applicant did not address the discrepancies that occurred during her interview for adjustment of status.

A review of the recently submitted documentation, and the documentation in the record, when considered in its totality, cannot overcome the discrepancies that were encountered during the interview on October 17, 2002.

Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that he 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.

ORDER: The motion to reconsider is granted and the prior district director and AAO decisions are affirmed.