



U.S. Citizenship
and Immigration
Services

AD

PURE



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 PETITIONER:

SELF-REPRESENTED

identifying data deleted to
prevent identity and unwanted
invasion of personal privacy

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 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. 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 her marriage is not considered valid under the immigration laws. *See District Director's Decision* dated September 13, 2003.

The record reflects that on December 19, 2002, at Miami, Florida, the applicant married [REDACTED] 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 January 27, 2003, the applicant filed for adjustment of status under section 1 of the CAA.

A review of Mr. [REDACTED] record revealed that the applicant's marriage to Mr. [REDACTED] in fact his third. A divorce decree dated December 3, 2002 was presented to show the dissolution of Mr. [REDACTED] second marriage but no divorce decree was submitted as evidence that Mr. [REDACTED] first marriage, in 1993 to a woman in Cuba, has been terminated. Thus the marriage between the applicant and Mr. [REDACTED] is deemed invalid under immigration law.

The district director determined that as Mr. [REDACTED] first marriage has not been terminated, the applicant's present marriage cannot be considered valid under immigration law. The application for adjustment of status was denied accordingly.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the 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 she is eligible for adjustment of status. She has failed to meet that burden.

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

ORDER: The district director's decision is affirmed.