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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 06 2004

IN RE: Applicant: [REDACTED]

PETITION: 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:

[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 Chile 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 she and her spouse are not residing together. 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 May 29, 2002 at Miami, Florida, the applicant married Jose Luis Cuellar, 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 26, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

On June 24, 2003 the applicant and her spouse appeared before the Citizenship and Immigration Services, (CIS) for an interview regarding the application for adjustment of status. On that date Mr. Cuellar admitted in writing and under oath, that he and the applicant do not live together, the marriage was fraudulent and that he was trying to assist the applicant to obtain permanent resident status.

Although the provisions of section 1 of the Act are applicable to the spouse or child of an alien described in the Act, 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 she residing with her Cuban citizen spouse in the United States. She is, therefore, ineligible for adjustment of status pursuant to section 1 of the CAA. 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 she is eligible for adjustment of status. She has failed to meet that burden.



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

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