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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

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FILE:  Office: MIAMI, FLORIDA Date:

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:



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 The district director's decision will be withdrawn, and the matter will be remanded to him for further action.

The applicant is a native and citizen of Colombia 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 immigration law. *See District Director's Decision* dated September 22, 2003.

The record reflects that on October 7, 2002, at Coral Gables, Florida, the applicant married Joel Morales, 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 October 17, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

The record reflects that the applicant's marriage to [REDACTED] is in fact his second one. No divorce decree was presented as evidence that [REDACTED] prior marriage has been terminated. Thus the marriage between the applicant and [REDACTED] was deemed invalid under the immigration laws.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the district director's findings. In response to the notice of certification counsel submitted a photocopy of a divorce decree issued in Cumanayagua, Cuba on October 6, 2003. This document states that [REDACTED] marriage to [REDACTED] was terminated on February 7, 2002 in Cumanayagua, Cuba. The record reflects that on October 16, 200[REDACTED] filed Form G-325, Biographic Information, in which he did not disclose his prior marriage. In addition, the marriage certificate presented by the applicant issued on October 7, 2002 states that [REDACTED] marriage to the applicant was his first one. Based on the documentation submitted by counsel the district director's decision will be withdrawn and the record will be remanded to him in order to verify the authenticity of the divorce decree and re-adjudicate the application for adjustment of status by conducting a full-scale marriage interview.

The district director will enter a new decision which, if adverse to the applicant, it will be certified to the AAO for review accompanied by a properly prepared record of proceedings.



ORDER: The district director's decision is withdrawn. The matter is remanded to him for further action consisted with the foregoing discussion.