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U.S. Department of Homeland Security  
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, D.C. 20536

[REDACTED]

FILE: [REDACTED] Office: MIAMI, FLORIDA

Date: **JAN 07 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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*Robert P. Wiemann*

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 child of a native or citizen of Cuba, pursuant to section 1 of the Act of November 2, 1966, because his stepfather admitted that his marriage to the applicant's mother was not a valid one. 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 October 18, 2002 at Miami, Florida, the applicant's mother married [REDACTED] 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 November 21, 2002, the applicant filed for adjustment of status under section 1 of the CAA.



On October 23, 2003 the applicant, his stepfather and his mother appeared before Citizenship and Immigration Services, (CIS) for an interview regarding the applications for adjustment of status. On that date Mr. [REDACTED] stated in writing that he and the applicant's mother do not live together and that he was going to be paid \$3,000 if everything went well and the applicant and his mother obtained permanent resident status. Based on Mr. [REDACTED] statement the marriage was deemed fraudulent and the application was denied. Since the applicant's mother's marriage to Mr. [REDACTED] was fraudulent the claimed relationship between the applicant and Mr. [REDACTED] is not valid and the application for adjustment of status was denied accordingly.

The applicant is not a native or a citizen of Cuba, nor is he residing with his Cuban citizen stepfather in the United States. He 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 he is eligible for adjustment of status. He has failed to meet that burden.

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

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