

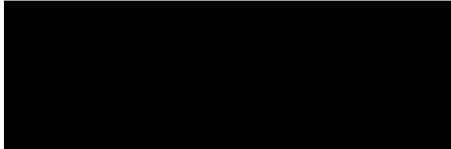
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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



AS

FILE:



Office: MIAMI, FL

Date:

JAN 07 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:



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 the Bureau of Citizenship and Immigration Services (Bureau) 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application approved.

The applicant is a native and citizen of Ecuador 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 CAA of November 2, 1966, because he entered into the marriage for the primary purpose of circumventing the immigration laws of the United States. See *District Director Decision* dated May 22, 2003.

The record reflects that on July 5, 2002 at Miami, Florida, the applicant 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 July 11, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

On April 30, 2003, during his interview for adjustment of status, the applicant and his spouse were each placed under oath and questioned separately regarding their domestic life and shared experiences. During the interview Ms. [REDACTED] rendered a verbal and written statement admitting that she entered into the marriage to help the applicant get residency. Ms. [REDACTED] signed a statement withdrawing her petition on behalf of the applicant.

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 asserts that the applicant's spouse was coerced by two Citizenship and Immigration Services, CIS, officers into writing the statement. He states that the applicant and his spouse were denied a competent translator although they were accompanied by the translator whom they had already paid. Citing *Matter of Thomas*, 19 I&N Dec. 464 (BIA 1987), counsel asserts that the applicant has the absolute right to competent translation, and that a competent translation does not include having only parts of the proceedings translated nor does it include having a CIS officer act as a translator when a professional translator is available and provided by the applicant at no expense to the government. In addition, the AAO notes that the interview notice specifically instructs the applicant to bring an interpreter if they do not speak English.

Counsel further asserts that the officer did not so much as look at the evidence the couple had taken to the interview, he did not accept it, and did not even mention documentary evidence or the lack thereof in the decision. Therefore, he submitted documentary evidence that shows that the applicant and his wife live together and have resided together as man and wife. Counsel submitted statements from the applicant and his spouse recounting the day of the interview and describing the approach taken by the two CIS officers and the manner in which the officers conducted the interview. Counsel submitted numerous affidavits from individuals who know the couple and attest that the couple is married and reside together.

As the applicant's spouse has provided a sworn affidavit that her statement withdrawing her petition was signed as a result of coercion, the AAO will consider that statement withdrawn and will review the application based on other documentation contained in the record.

A review of the CIS file does not reveal any notes taken during the interview by the CIS officers nor does the decision of the district director address any inconsistencies regarding statements made during their separate interviews. Based on the documentation provided by counsel it is apparent that the applicant and his spouse have resided at the same address at least since July 2002.

A review of the submitted documentation, and the documentation in the record, when considered in its totality, establishes the bona fides of the marriage between the applicant and Ms. Rodriguez.

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. Here, the applicant has met that burden. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained and the application approved.