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

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

*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 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. 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 she entered into the marriage for the primary purpose of circumventing the immigration laws of the United States. See *Acting District Director Decision* dated June 20, 2003.

The record reflects that on July 10, 2001 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 March 12, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

On August 15, 2002, the applicant and her spouse (Mr. [REDACTED]) appeared before the Immigration and Naturalization Service (now Citizenship and Immigration Services, "CIS") for an interview regarding the application for permanent residence. At that time it was decided that the case be continued and that the couple be scheduled to appear for a full marriage interview on September 13, 2002.

On September 13, 2002 the applicant and Mr. [REDACTED] were each placed under oath and questioned separately regarding their domestic life and shared experiences. Citing *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983), and *Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975), the acting district director maintained that when there is reason to doubt the bona fides of a marital relationship, evidence must be presented to show that the marriage was not entered into solely for the purpose of circumventing the immigration laws of the United States. The acting district director determined that the discrepancies encountered at the interview, and the lack of material evidence presented, strongly suggest that the applicant and her spouse entered into a marriage for the primary purpose of circumventing the immigration laws of the United States.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the acting district director's findings. In response to the notice of certification, counsel submitted a letter of explanation of the discrepancies that occurred during the interview, pictures from the wedding ceremony, pictures with family and friends, bank statements and other correspondence showing both the applicant and her husband's names on the documents. Counsel asserts that Mr. [REDACTED] suffers from a chronic heart disease and his responses to the questions asked by the CIS officer were affected by the medication he receives. Counsel provided a copy of a prescription dated July 9, 2003 for "Zyprexa" a drug used for the treatment of schizophrenia and Bipolar I Disorder. The warning notification for "Zyprexa" states that it has "...the potential to impair judgment...". In addition counsel stated that Mr. [REDACTED] receives two medications for high blood pressure and congestive heart disease and one to lower his cholesterol and the triglyceride levels in his blood. The attorney's assertions that Mr. [REDACTED] inconsistent answers during the adjustment interview were due to the medication he received is not persuasive since the prescription for "Zyprexa" is dated July 9, 2003, approximately 10 months after the interview date. In addition, at the time of the interview both Mr. [REDACTED] and the applicant stated that the only medication that Mr. [REDACTED] was taking was Nitro for his heart. No other medication was indicated.

A review of the recently submitted documentation, and the documentation in the record, when considered in its totality, cannot overcome the discrepancies that were encountered during the interview on September 13, 2002.

Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that she is eligible for adjustment of status. Further, *Matter of Marques*, 16 I&N Dec. 314 (BIA 1977), held that when an alien seeks favorable exercise of the discretion of the Attorney General, it is incumbent upon him to supply the information that is within his

knowledge, relevant, and material to a determination as to whether he merits adjustment. When an applicant fails to sustain the burden of establishing that she is entitled to the privilege of adjustment of status, her application is properly denied. Here, the applicant has not met that burden. Accordingly, the acting district director's decision will be affirmed.

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