

U.S. Department of Homeland Security

Citizenship and Immigration Services

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



AD  
JAN 13 2004

FILE:

Office: Miami

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 APPLICANT:



PUBLIC COPY

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 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, 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 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, 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 acting 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, because he had not established that his marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States. The acting district director, therefore, denied the application.

In response to the notice of certification, counsel asserts that the Service, in making a determination on the bona fides of the applicant's union with his wife, erroneously relies on assumptions made during a single, and very short visit to the home of the applicant and his wife.

The record reflects that on March 25, 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 April 12, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

The record contains a Memorandum of Investigation reflecting that on June 19, 2003, at approximately 7:30 a.m., special agents from the Service's Investigation Division appeared at the applicant's residence. They encountered the applicant, his ex-wife [REDACTED], and their son. Ms. [REDACTED] was not at the apartment, and when questioned as to the living arrangements of the residence, the applicant initially stated that Ms. [REDACTED] did not reside at that location, but later insisted she did. However, the applicant was unable to provide any evidence establishing the fact that Ms. [REDACTED] resided with him. When the applicant was asked about Ms. [REDACTED] whereabouts, he stated that she was accompanying [REDACTED] (the daughter of the applicant and Ms. [REDACTED] to the doctor. The investigating officers noted that a bank statement for Ms. [REDACTED] reflecting the applicant's address and dated May 2003, was in plain view on the kitchen table.

Counsel, in response to the notice of certification, states that when the Service officers appeared at the applicant's home, [REDACTED] (the applicant's spouse), who knows many doctors, had taken the applicant's daughter who was ill. She further states:

On the morning in question, Applicant's ex-spouse had stopped by, as she has suddenly began doing, with the excuse of visiting the children. When she drops by, it is usually to let the Applicant know of difficulties she may be experiencing, in an attempt to get the Applicant to lend her money, or anything else she may be needing. This situation is becoming tiresome, but neither the Applicant, nor [REDACTED] has had the courage to inform applicant's ex-spouse, that they would prefer her visits to be limited. Another reason why such sudden and unexpected visits have continued, has been for the children. They did not realize that their parents were experiencing any problems until the marriage fell apart.

While counsel states that she is providing verification of the doctor's visit, as well as a prescription for medication, and documentation demonstrating that the applicant's ex-spouse does not reside with the applicant and his spouse, these documents were not provided. Nor did the applicant address the findings of the investigating officers that a bank statement for Ms. [REDACTED] reflecting the applicant's address and dated May 2003 (over two

years after the divorce of the applicant and Ms. [REDACTED] was on the kitchen table. Furthermore, although the acting district director noted that the applicant advised the special agents that Ms. [REDACTED] had taken his daughter to the doctor, he was unable to produce any evidence establishing the fact that Ms. [REDACTED] resided with him. Nor did counsel submit self-affidavits from the applicant and from Ms. [REDACTED] to concur or refute the findings of the special agents. Statements by counsel are not evidence. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

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. 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 he is entitled to the privilege of adjustment of status, his application is properly denied.

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

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