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U.S. Citizenship
and Immigration
Services

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FILE:



Office: MIAMI, FLORIDA

Date:

JUN 01 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 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.

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, who certified his decision to the Administrative Appeals Office (AAO) for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Peru 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 he entered into the marriage for the primary purpose of circumventing the immigration laws of the United States. *See District Director's Decision* dated February 28, 2004.

The record reflects that on August 10, 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 August 22, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

On February 5, 2003, the applicant appeared before the Immigration and Naturalization Service (now known as Citizenship and Immigration Services, (CIS)) for an interview regarding the application for permanent residence. A former District Adjudications Officer who was arrested and subsequently convicted for his involvement in a marriage fraud scheme interviewed the applicant. During the course of the investigation the Miami District office identified numerous cases that were part of the District Adjudications Officer's marriage fraud scheme. Two of those cases were that of the applicant's and his ex-spouse. The applicant was scheduled to appear for another adjustment interview but he failed to appear on three different occasions. On November 7, 2003, his ex-spouse and her Cuban spouse appeared for a scheduled adjustment of status interview with CIS. On the same day the applicant's ex-spouse's husband admitted in writing and under oath that the marriage between he and the applicant's ex-spouse was not valid, that his wife resides with the applicant and that he was going to be paid \$2,000 if the applicant's ex-spouse obtained her lawful permanent status. Citing *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983), and *Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975), the 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 district director determined that the lack of material evidence presented, strongly suggest that the applicant and his 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 district director's findings. No additional evidence has been entered into the record.

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 he is entitled to the privilege of adjustment of status, his application is properly denied. Here, the applicant has not met that burden. Accordingly, the district director's decision will be affirmed.

ORDER: The district director's decision is affirmed.