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U.S. Citizenship  
and Immigration  
Services



FILE:  Office: MIAMI, FLORIDA Date: **MAY 03 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 PETITIONER:



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.



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 Cuba 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 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 record reflects that on May 2, 2002, at Aventura, Florida, the applicant married [REDACTED] and on May 8, 2002, his spouse filed for adjustment of status under section 1 of the CAA. On November 26, 2002, the applicant and Ms. [REDACTED] were each placed under oath and questioned separately regarding their domestic life and shared experiences. During the interview a significant number of discrepancies were encountered and the district director determined that these discrepancies and the lack of material evidence presented, strongly suggested that the applicant and his spouse entered into a marriage for the primary purpose of circumventing the immigration laws of the United States. The application was denied accordingly.

As stated above section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident spouse or parent.

Documentation in the record reflects that the applicant's father resides in the United States, however, there is no indication of his immigration status. It is, therefore, unclear whether he is a qualifying relative.

On January 16, 2003, the applicant was instructed to submit Form I-601, Application for Waiver of Grounds of Excludability, along with the appropriate fee and documentation explain how his deportation may result in extreme hardship to his qualifying relative. The applicant failed to comply with the CIS' request and has not filed the required waiver application. On January 29, 2003, counsel states that the applicant denies the assertion the he entered into a fraudulent marriage with Ms. [REDACTED] and therefore is not required to filed a Form I-601. No additional evidence has been entered into the record.

The record clearly reflects that the applicant knowingly engaged in a fraudulent marriage in an attempt to circumvent immigration laws and convey a benefit to another individual.

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 district director to deny the application will be affirmed.

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