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U.S. Citizenship and Immigration Services

[redacted]

A2

FILE: [redacted] Office: MIAMI, FLORIDA Date: MAY 13 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 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 for review. The 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. 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 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 did not qualify for adjustment of status as the spouse of a native or citizen of Cuba, pursuant to section 1 of the CAA, because her spouse is not a native or citizen of Cuba. The district director, therefore, denied the application. *See District Director Decision* dated February 24, 2004.

The applicant has provided no statement or additional evidence on notice of certification.

The record reflects that on September 10, 1974, the applicant's spouse [redacted] was issued an Alien Registration Card (ARC) with the classification code of CU-6 (Cuban native or citizen who adjust under the CAA). A review of Mr. [redacted] service file, A17-669-935, reveals that the code was erroneously accorded to him and that the right code of admission should have been CU-7 (non-Cuban child of an alien classified as a CU-6). Mr. [redacted] Peruvian citizen born in Lima, Peru. On October 19, 1966, he was admitted into the United States as a non-immigrant for pleasure. On December 27, 1995, at Miami Beach, Florida, the applicant married M[redacted] Based on that marriage, on May 9, 2000, the applicant filed for adjustment of status under section 1 of the CAA.

There is no evidence that Mr. [redacted] ver claimed Cuban citizenship. The statute clearly states that the provisions of section 1 of the CAA of November 2, 1966, shall be applicable to the spouse and child of any alien described in this subsection. In order for the applicant to be eligible for the benefits of section 1 of the CAA, he or she must be the spouse of a native or citizen of Cuba who has been inspected and admitted or paroled into the United States, and who has been physically present in the United States for at least one year. *See Matter of Milian*, 13 I&N Dec. 480 (Acting Reg. Comm. 1970) (applying the physical presence requirement as amended by Refugee Act of 1980, Pub. L. No. 96-212, sec. 203(i), 94 Stat. 102, 108 (1980)).

In the present case, the spouse of the applicant was admitted as a non-Cuban child of an alien who adjusted under section 1 of the CAA.. Since the applicant's spouse has failed to establish that he is a citizen of Cuba the benefits of section 1 of the CAA are not available to the applicant. The decision of the district director to deny the application will be affirmed.

This decision is without prejudice to the filing of a Relative Immigrant Visa Petition (Form I-130) by the applicant's spouse on behalf of the applicant.

ORDER: The district director's decision is affirmed.