U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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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 (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 and his spouse are not residing together. The district director, therefore, denied the application. *See District Director's Decision* dated January 15, 2004.

The record reflects that on December 22, 2001, at Miami, Florida, the applicant married Leyma Martinez, 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 January 25, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

On January 15, 2004, the applicant and his spouse (Ms. Martinez) appeared before Citizenship and Immigration Services, (CIS) for an interview regarding the application for permanent residence. On the same day the applicant stated under oath and in writing that he and Ms. Martinez are separated and do not reside together. He asked that his case be closed.

Although the provisions of section 1 of the CAA are applicable to the spouse or child of an alien described in the CAA, it has been held in *Matter of Bellido*, 12 I&N Dec. 369 (Reg. Comm. 1967), that an applicant who is not a native or citizen of Cuba and is not residing with the Cuban citizen spouse in the United States, is ineligible for adjustment of status pursuant to section 1 of the CAA.

The applicant is not a native or a citizen of Cuba, nor is he residing with his Cuban citizen spouse in the United States. He is, therefore, ineligible for adjustment of status pursuant to section 1 of the CAA. 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 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.