

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

A2

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



MAY 28 2004

FILE:  Office: MIAMI, FLORIDA 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:



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 Ecuador 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 child of a native or citizen of Cuba, pursuant to section 1 of the Act of November 2, 1966, because her mother's marriage to her stepfather was deemed to be fraudulent. The district director, therefore, denied the application. See *District Director Decision* dated October 1, 2003.

The record reflects that on August 28, 2002 at Miami, Florida, the applicant's mother 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 September 25, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

The record contains a memorandum of investigation dated August 12, 2003. The memorandum shows that agents of the Immigration and Customs Enforcement conducted an investigation regarding the validity of the marriage between the applicant's mother and Mr. [REDACTED]. Based on the investigation it was concluded that the applicant's mother and Mr. [REDACTED] do not reside together as husband and wife and her mother entered into a marriage for the primary purpose of circumventing the immigration laws of the United States.

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 discrepancies encountered during the investigation, and the lack of material evidence presented, strongly suggest that the applicant's mother and her spouse entered into a marriage for the primary purpose of circumventing the immigration laws of the United States.

Since the marriage between the applicant's mother and Mr. [REDACTED] was deemed to be fraudulent, the claimed relationship between the applicant and Mr. [REDACTED] is not valid and the application for adjustment was denied accordingly.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the district director's findings. In response to the notice of certification, counsel submitted a letter of explanation of the discrepancies that occurred during the investigation, pictures with family and friends, and other correspondence in an effort to overcome the findings of the investigation conducted by agents of the ICE.

A review of the recently submitted documentation, and the documentation in the record, when considered in its totality, cannot overcome the findings that were encountered during the investigation conducted on August 12, 2003.

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.