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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: [Redacted]

Office: MIAMI, FLORIDA

Date: 3/1/07

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: SELF-REPRESENTED

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 Venezuela 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 March 10, 2004.

The record reflects that on December 13, 2002, at Coral Gables, 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 11, 2003, the applicant filed for adjustment of status under section 1 of the CAA.

On February 3, 2004, the applicant and his spouse, Ms. [REDACTED] appeared before Citizenship and Immigration Services (CIS) for an interview regarding the application for permanent residence. At that time it was decided that the case be continued and that an investigation regarding the bona fides of the marriage would be conducted.

The record reveals that on March 10, 2004, agents of the Immigration and Customs Enforcement (ICE) conducted an investigation regarding the validity of the applicant's marriage with Ms. [REDACTED]. The report of investigation mistakenly reflects that the investigation was conducted on January 29, 2004. The applicant does not dispute that the investigation took place on March 10, 2004. The report states that the agents visited the applicant's place of residence and when they asked the applicant the whereabouts of Ms. [REDACTED] he first replied that she was at work but after further questioning he admitted that he married Ms. [REDACTED] in order to obtain permanent residence status. Based on the report of investigation it was concluded that the applicant and his spouse do not reside together as husband and wife.

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 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. In response to the notice of certification the applicant submits an affidavit, pictures from the wedding ceremony, and previously submitted bank statements, copies of auto insurance statements, a rental agreement and other correspondence showing both the applicant and his wife's names on the documents. In addition the applicant submits affidavits from his landlord and other individuals who state that they know the applicant and Ms. [REDACTED] and attest that the couple is married and reside together. In his affidavit the applicant states that he never admitted to the ICE agents that his marriage was fraudulent. In her affidavit the applicant's landlord states that she was present during the questioning of the applicant by ICE agents and she states that at no time did she hear the applicant state that his marriage was fraudulent.

In her affidavit the applicant's landlord Ms. [REDACTED] states that she has rented a room to the applicant and his spouse since November 1, 2003 and that the ICE agents entered her residence on March 10, 2004 asking for the applicant. The monthly rental agreement submitted by the applicant reflects that the applicant is renting an apartment consisting of three rooms and two bathrooms from [REDACTED] not a room from Ms. [REDACTED]. Ms. [REDACTED] affidavit cannot, therefore, be given any weight in this proceeding.

In his decision the District Director mentioned that the applicant's daughter and son have filed applications for adjustment of status. In his affidavit the applicant notes that there is no law prohibiting members of the same family from filing adjustment of status applications with CIS around the same time. The record of proceedings in this case is regarding the applicant's application for adjustment of status and therefore the AAO will not address his children's applications.

A review of the recently submitted documentation, and the documentation in the record, when considered in its totality, cannot overcome the conclusion of the investigative report of March 10, 2004.

Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that he 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.