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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: OCT 1 2 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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy
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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 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 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 April 30, 2004.

The record reflects that on November 8. 2002, at Coral Gables, Florida, the applicant married 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 29, 2003, the applicant filed for adjustment of status under section 1 of the CAA.

On April 30, 2004, the applicant and his spouse, Ms. appeared before U.S. Citizenship and Immigration Services (USCIS) for an interview regarding the application for permanent residence. The applicant and Ms. were each placed under oath and questioned separately regarding their domestic life and shared experiences. 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 interview, 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 counsel submits a brief in which he states that the applicant and his spouse entered into their marriage in good faith. Counsel addresses some of the discrepancies made by the couple during the interview and states that the District Director did not balance the consistent statements against the inconsistent statements given by the applicant and his spouse during the interview. Counsel states that in *Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988), it was held that in order to support a conclusion that an alien has attempted or conspired to enter into a marriage for the purpose of evading

the immigration laws the evidence of such attempt or conspiracy must be documented in the alien's file and must be substantial and probative.

A review of the documentation in the record of proceeding reveals that based on interview for adjustment of status the applicant's service file contains substantial and probative evidence for a finding that his marriage was entered into for the purpose of evading the immigration laws. Counsel's explanation of some of the discrepancies cannot overcome the discrepancies that were encountered during the interview of April 30, 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.