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: 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

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 Cuba 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 District Director found the applicant inadmissible to the United States because she falls within the purview of section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See District Director's Decision* dated May 12, 2004.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that on November 18, 2002, at Miami, Florida, the applicant married [redacted], a native and citizen of Venezuela. The record further reflects that on November 22, 2002, the applicant and Mr. [redacted] filed for adjustment of status under section 1 of the CAA.

On October 28, 2003, the applicant and Mr. [redacted] appeared before U.S. Citizenship and Immigration Services, (USCIS) for an interview regarding the application for permanent residence. The applicant and her spouse were each placed under oath and questioned separately regarding their domestic life and shared experiences. The District Director determined that the discrepancies encountered at 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. 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 contains a memorandum of investigation dated February 10, 2004. The memorandum shows that agents of the Immigration and Customs Enforcement conducted an investigation regarding the validity of the applicant's marriage with Mr. The report states that the agents visited the applicant's place of residence and the evidence indicated that the applicant resided there with her boyfriend and not Mr In addition, the applicant stated that that she did not know where Mr. was and that she had been trying to divorce the applicant. Initially the applicant stated that the individual residing with her at her place of residence was her cousin. After further questioning the applicant admitted that the person residing with her was her boyfriend. Based on the investigation it was concluded that the applicant and her spouse do not reside together as husband and wife.

The applicant is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As stated above section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident spouse or parent.

A review of the documentation in the record reflects that the applicant does not have a qualifying family member in order to be eligible to file for a waiver under section 212(i) of the Act.

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 she is eligible for adjustment of status. She 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.