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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

A2

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: SEP 15 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

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The AAO affirmed the District Director's decision. The matter is now before the AAO on a motion to reopen. The motion will be dismissed and the previous decisions of the District Director and the AAO will be affirmed.

The applicant is a native and citizen of Argentina 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 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 did not qualify for adjustment of status as the spouse of a native or citizen of Cuba, pursuant to section 1 of the CAA, because his spouse was not paroled or admitted into the United States as a nonimmigrant. The District Director, therefore, denied the application. *See District Director's Decision* dated July 17, 2003. The decision was affirmed by the AAO. *See AAO decision,* dated January 20, 2004.

In the motion to reopen the applicant submits a letter in which he states that Citizenship and Immigration Services (CIS) based its decision on an unpublished AAO decision dated July 16, 1997. The record of proceeding reflects that the applicant submitted an identical letter with his appeal on August 12, 2003.

In its January 20, 2004 decision, the AAO noted that the unpublished AAO decision the applicant refered to had been withdrawn.

The regulation at 8 C.F.R. § 103.5(a) states in pertinent part:

> (a) Motions to reopen or reconsider. . .
>
> (2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence.
>
> (3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

> (4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

The AAO finds that in the motion to reopen no new information or evidence was submitted and the applicant did not identify any legal error or misapplication of law in the previous AAO decision.

The issues in this matter were thoroughly discussed by the District Director and the AAO in their prior decisions. In the motion to reopen the applicant failed to provide any new evidence or set forth any new facts to be proved. Since no new issues have been presented for consideration, the motion will be dismissed.

This decision is without prejudice to the filing of a Relative Immigrant Visa Petition (Form I-130) by the applicant's spouse on behalf of the applicant.

ORDER: The motion is dismissed and the prior AAO decision is affirmed.