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:

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 PETITIONER:

[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

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 a child of a native or citizen of Cuba, pursuant to section 1 of the CAA of November 2, 1966, because his mother's marriage to his stepfather is not considered valid under the immigration laws. *See District Director's Decision* dated June 22, 2004.

The record reflects that on May 17, 2002, at Coral Gables, Florida, the applicant's mother married a native and citizen of Cuba. Based on that marriage, on June 24, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

The applicant's mother and her spouse appeared before Citizenship and Immigration Services, (CIS) for an interview regarding the application for permanent residence. During the interview it was discovered that first marriage had not been terminated when he married the applicant's mother on May 17, 2002. The record of proceedings reveals that first marriage was terminated by divorce on December 16, 2002. Since first marriage was not terminated on the date of his marriage with the applicant's mother, the claimed relationship between the applicant and 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. 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 he is eligible for adjustment of status. He 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.