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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

A 2

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: APR 1 5 2005

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

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 she and her spouse are not residing together. The District Director, therefore, denied the application. *See District Director Decision* dated June 16, 2004.

The record reflects that on August 9, 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 December 10, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

On November 25, 2003, the applicant and her spouse appeared before Citizenship and Immigration Services, (CIS) for an interview regarding the application for permanent residence. The applicant and were each placed under oath and questioned separately regarding their domestic life and shared experiences. admitted under oath that he and the applicant have been separated and have not been residing together as husband and wife since December 2002. In addition he stated that he is living with his ex-spouse and his daughter. Furthermore he stated that the applicant resides at the home where she works as a domestic employee.

Although the provisions of section 1 of the CAA are applicable to the spouse or child of an alien described in the CAA, it has been held in *Matter of Bellido*, 12 I&N Dec. 369 (Reg. Comm. 1967), that an applicant who is not a native or citizen of Cuba and is not residing with the Cuban citizen spouse in the United States, is ineligible for adjustment of status pursuant to section 1 of the CAA.

The applicant is not a native or a citizen of Cuba, nor is she residing with her Cuban citizen spouse as husband and wife. She is, therefore, ineligible for adjustment of status pursuant to section 1 of the CAA. 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.