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

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U.S. Citizenship and Immigration Services

A2

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: AUG 11 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: 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 The District Director's decision will be withdrawn, and the matter will be remanded to him for further action.

The applicant is a native and citizen of Honduras 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 and his spouse are divorced. The District Director, therefore, denied the application. *See District Director Decision* dated November 23, 2004.

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.

The record reflects that on March 24, 2003, at Miami, Florida, the applicant married [redacted] 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 September 3, 2003, the applicant filed for adjustment of status under section 1 of the CAA.

The record of proceeding contains a final judgment of dissolution of marriage between the applicant and [redacted] issued in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, dated July 18, 2002. Based on this divorce decree the District Director found that the applicant is not eligible for adjustment of status under section 1 of the CAA and denied the adjustment of status application.

The AAO finds that the District Director erred in his decision stating that the applicant is no longer married to [redacted] nd not eligible for the benefits described in section 1 of the CAA of November 2, 1966. The applicant divorced Ms. [redacted] on July 18, 2002, remarried her on March 24, 2003, and filed his application for adjustment of status under section 1 of the CAA on September 3, 2003. According to the record the applicant is married to 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. Therefore the applicant is eligible for adjustment of status to that of a lawful permanent resident under section 1 of the CAA, if no other inadmissibility exists.

The record of proceeding fails to reveal if the applicant and his spouse were interviewed regarding the application for permanent residence. The District Director's decision will be withdrawn and the record will be remanded to him in order to arrange for an interview with the applicant and and to review the file to determine if the applicant is excludable under any section of the Immigration and Nationality Act. The District Director will enter a new decision which, if adverse to the applicant is to be certified to the AAO.

ORDER: The District Director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion.