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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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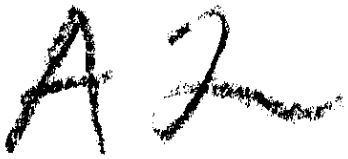

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: JUL 12 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 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 child of a native or citizen of Cuba, pursuant to section 1 of the Act of November 2, 1966, because he is not a child as defined by section 101(b)(1)(B) of the Immigration and Nationality Act (the Act). The District Director, therefore, denied the application accordingly. *See District Director's Decision* dated October 8, 2004.

The record reflects that on April 19, 2002, at Miami Beach, Florida, the applicant's mother 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 May 28, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

Section 101(b) of the Act provides, in pertinent part, that:

> (b) As used in titles I and II-
>
> (1) The term "child" means an unmarried person under twenty-one years of age . . .
>
> (B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred

Section 4 of the CAA states in pertinent part, that:

> Except as otherwise specifically provided in this Act, the definition contained in Section 101(a) and (B) of the Act shall apply in the administration of the Act. . . .

The record of proceedings reflects that the applicant submitted a birth certificate that indicates that he was born on June 7, 1982, in Colombia. As stated above the applicant's mother married a Cuban national on April 19, 2002, after the applicant had reached his eighteenth year of age.

Section 1 of the CAA is applicable to the spouse or child of an alien described in the CAA. In the instant case the applicant is not a "child" as defined by section 101(b)(1)(B) of the Act and therefore he is 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. 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.