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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE:



Office: MIAMI, FLORIDA

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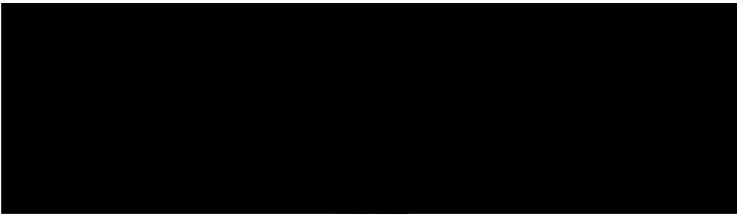
IN RE:

Applicant:



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:



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 Peru 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 entered into the marriage for the primary purpose of circumventing the immigration laws of the United States. *See District Director's Decision* dated September 22, 2004.

The record reflects that on May 6, 2003, at [REDACTED] Florida, the applicant married [REDACTED] a native and citizen of Cuba. Based on that marriage, on May 30, 2003, the applicant filed for adjustment of status under section 1 of the CAA.

On August 20, 2004, the applicant and his spouse, Ms. [REDACTED] appeared before Citizenship and Immigration Services (CIS) for an interview regarding the application for permanent residence. The applicant and Ms. [REDACTED] were each placed under oath and questioned separately regarding their domestic life and shared experiences. Citing *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983), and *Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975), the District Director maintained that when there is reason to doubt the bona fides of a marital relationship, evidence must be presented to show that the marriage was not entered into solely for the purpose of circumventing the immigration laws of the United States. The District Director determined that the discrepancies encountered during the interview, and the lack of material evidence presented, strongly suggested that the applicant and his spouse entered into a marriage for the primary purpose of circumventing the immigration laws of the United States.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. In response to the notice of certification counsel submits a brief in which he addresses the discrepancies that arose during the couple's interviews and states that the District Director did not balance the consistent statements against the inconsistent statements given by the applicant and his spouse during the interview. In addition counsel states that the District Director did not issue a notice of intent to deny the

adjustment of status application in order to give the couple the opportunity to rebut the discrepancies in their interview statements.

The regulation at 8 C.F.R. § 245 - Adjustment of status to that of person admitted for permanent residence, states in pertinent part:

Sec. 245.2 Application.

. . . .

(5) Decision -

- (i) General. The applicant shall be notified of the decision of the director and, if the application is denied, the reasons for the denial.

There is nothing in the statute or regulations that requires a notice of intent to deny.

In his brief counsel addresses some of the inconsistent statements made by the applicant and Ms. [REDACTED] during the interview and attributes these inconsistencies to a misunderstanding due to the vague nature of the immigration officer's questions. Counsel submits pictures from the wedding ceremony, the party that followed, tax returns, bank statements, cancelled checks, utility bills, store receipts, magazine subscriptions, and other documentation submitted previously, showing both the applicant's and his wife's names in an attempt to establish the bona fide nature of their relationship.

A review of the record of proceedings and the explanation provided by counsel reveals that some of the inconsistencies in the couple's testimony were minor and therefore are given little weight. These inconsistencies include the type of pizza the applicant and his spouse ate the night prior to the interview, the manner in which the applicant gets up in the morning to go to work, a clock radio vs. an alarm clock, and the fact that he mailed the immigration forms instead of submitting them to CIS in person. However, there were other more substantial inconsistencies that have not been adequately explained. Counsel's explanation that the applicant's spouse stated that the couple resided at [REDACTED], Florida after the marriage ceremony because that is where they resided nine months after the marriage ceremony is not persuasive. Counsel indicates that the applicant's spouse stated that she resided with the applicant before the marriage ceremony because she used to spend time at the applicant's apartment. During the interview the applicant's spouse was asked specifically when she started living with the applicant and not if she spent time and overnights at the applicant's apartment. The couple's inconsistencies as to how they arrived at the marriage ceremony and the events after the ceremony, the issue of whether the applicant's spouse had any vehicles registered under her name and other contradictions have not been explained in a convincing manner. Counsel's explanation of the inconsistencies in the couple's testimony and a review of the recently submitted documentation and the documentation previously contained in the record of proceedings do not overcome the discrepancies that were encountered during their interview on August 20, 2004.

Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that she is eligible for adjustment of status. Further, *Matter of Marques*, 16 I&N Dec. 314 (BIA 1977), held that when an alien seeks favorable exercise of the discretion of the Attorney General, it is incumbent upon him to supply the information that is within his knowledge, relevant, and material to a determination as to whether he merits adjustment. When an applicant fails to sustain the burden of establishing that he is entitled to the

privilege of adjustment of status, his application is properly denied. Here, the applicant has not met that burden. Accordingly, the District Director's decision will be affirmed.

ORDER: The District Director's decision is affirmed.