

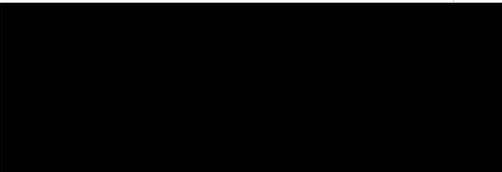
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



A2

FILE:



Office: MIAMI, FLORIDA

Date: JUN 06 2005

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:

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. Wiegmann

Robert P. Wiegmann, 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 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 did not qualify for adjustment of status as the spouse of a native or citizen of Cuba, pursuant to section 1 of the CAA, because her spouse was not paroled or admitted into the United States as a nonimmigrant. The District Director, therefore, denied the application.

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 the applicant's representative submits a brief in which she states that the applicant's spouse was admitted to the United States as a temporary resident and after his divorce he was granted adjustment of status under section 1 of the CAA of November 2, 1966. The representative states that since the applicant's spouse was given resident status as a CU-6, his spouse (the applicant) qualifies for adjustment of status pursuant to section 1 of the CAA.

The AAO notes that although the applicant's representative submits a brief the record of proceeding does not contain a Notice of Entry of Appearance as Attorney or Representative (Form G-28). Therefore the AAO will not be sending a copy of the decision to the individual mentioned in the brief but this office will accept the submitted information.

The record reflects that the applicant's spouse [REDACTED] was admitted to the United States for conditional status of permanent residence as a CR-1 (spouse of a U.S. citizen). The record reveals that Mr. [REDACTED] failed to file a Petition to Remove the Conditions on Residence (Form I-751) and he adjusted his status to that of a lawful permanent resident of the United States, pursuant to section 1 of the CAA. On October 9, 2002, at Miami, Florida, the applicant married Mr. [REDACTED] a native and citizen of Cuba. Based on that marriage, on January 22, 2003, the applicant filed for adjustment of status under section 1 of the CAA.

On February 17, 1993, the General Counsel, Immigration and Naturalization Service, INS, issued a legal opinion stating that after the naturalization of a person who obtained permanent residence under section 1 of

the CAA of November 2, 1966, the Service may not adjust the status of that person's spouse under section 1 of the CAA.

In his analysis the General Counsel states in pertinent part:

The benefit which the current applicant seeks is available only to an alien who is the spouse or child of an "alien described in" section 1 of the 1966 Act. 1966 Act, Pub. L. No. 89-732, 1, 80 Stat. at 1161. The 1966 Act specifically directs that " the definitions contained in section 101(a) . . . of the Immigration and Nationality Act shall apply in the administration of this Act." Id., 4, 80 Stat. at 1161. The term "alien" in section 1 of the 1966 Act, therefore, "means any person not a citizen or national of the United States." INA 101(a)(3), 8 U.S.C. 1101(a)(3). Since this applicant's husband is a citizen of the United States, he is not an "alien described in" section 1 of the 1966 Act. She is not the "spouse. . . of [an] alien described in" section 1, and, therefore, is not eligible for adjustment of status under section 1.

A search of the electronic database of Citizenship and Immigration Services (CIS) reveals the Mr. [REDACTED] was naturalized on April 22, 2005. Accordingly, the applicant is ineligible for adjustment of status to permanent residence pursuant to section 1 of the CAA of November 2, 1966.

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. 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.