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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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AZ

FILE:



Office: MIAMI, FLORIDA

Date: JUN 16 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. 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 he entered into the marriage for the primary purpose of circumventing the immigration laws of the United States. *See District Director's Decision* dated October 11, 2004

The record reflects that on November 20, 2002, at Miami, Florida, the applicant married [REDACTED], a native and citizen of Cuba. Based on that marriage, on March 20, 2003, the applicant filed for adjustment of status under section 1 of the CAA.

On September 27, 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 some of 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. Counsel states that in *Matter of Tawfik*, I&N Dec. 3130 (BIA 1990), it was held that a conclusion that an alien has entered into a marriage for the purpose of obtaining immigration benefits must be based on substantial and probative evidence. In addition counsel states that *Matter of Obaigbena* 19 I&N

Dec. 553 (BIA 1988) held that the petitioner must be given an opportunity to rebut any derogatory evidence which the Service relies on to deny a visa petition and that the District Director is in violation of law since he did not give the couple the opportunity to rebut the discrepancies in their interview statements.

The AAO notes that although counsel submits a brief, the record of proceedings 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 attorney mentioned in the brief but this office will accept the submitted information.

Matter of Obaigbena dealt with a denial of a visa petition in which a notice of intent to deny is required. The instant case does not raise this issue.

The regulation at 8 C.F.R. § 103.4 states in pertinent part:

Certifications.

(a) Certification of other than special agricultural worker and legalization cases--

. . . .

(2) Notice to affected party. When a case is certified to a Service officer, the official certifying the case shall notify the affected party using a Notice of Certification (Form I-290C). The affected party may submit a brief to the officer to whom the case is certified within 30 days after service of the notice. If the affected party does not wish to submit a brief, the affected party may waive the 30-day period.

A review of the documentation in the record of proceeding contains substantial and probative evidence for a finding that the applicant's marriage was entered into for the purpose of evading the immigration laws. The CIS officer reviewed all documentation submitted by the applicant and his spouse and even mentioned the documentary evidence in the decision. Counsel's explanation of certain inconsistencies in the couple's testimony cannot overcome the totality of the discrepancies that were encountered during their interview on September 27, 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.