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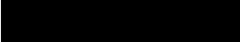
**U.S. Citizenship
and Immigration
Services**

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FILE:  Office: MIAMI, FLORIDA Date: **MAR 18 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:



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

The record reflects that on March 5, 2002, Coral Gables, Florida, the applicant married [REDACTED] 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 March 6, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

The record of proceedings reveals that a former District Adjudications Officer, who was arrested and subsequently convicted for his involvement in a marriage fraud scheme, had provided the applicant with a stamp indicating that permanent residence status had been granted on March 5, 2002. On June 1, 2004, the District Office issued a Notice of Reopening Adjustment of Status Proceedings and a new appointment notice was forwarded to the applicant in order to appear before Citizenship and Immigration Services, (CIS) for an interview regarding the application for permanent residence.

On July 22, 2004, the applicant appeared before CIS for an interview regarding the application for permanent residence. On the same date she stated that she and her Cuban citizen spouse are separated and she does not know his whereabouts.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. Counsel submits a brief and an affidavit by the applicant. In his brief and in her affidavit both counsel and the applicant state that the applicant was not aware that her spouse had obtained a resident status stamp in an illegal manner. The applicant does not dispute the fact that she and her spouse have not resided together as husband and wife since November 13, 2003, but states that she is the innocent victim and that she has been suffering from her separation and had to seek psychological help. Counsel submits a psychological report of behalf of the applicant and documentation in order to establish the bona

fides of the marriage. Counsel states that the evidence submitted establishes that the applicant's marriage was entered into in good faith and requests that CIS not deny her applicant for adjustment of status.

Although the provisions of section 1 of the CAA are applicable to the spouse or child of an alien described in the CAA, it has been held in *Matter of Bellido*, 12 I&N Dec. 369 (Reg. Comm. 1967), that an applicant who is not a native or citizen of Cuba and is not residing with the Cuban citizen spouse in the United States, is ineligible for adjustment of status pursuant to section 1 of the CAA.

The applicant is not a native or a citizen of Cuba, nor is she residing with her Cuban citizen spouse in the United States. She is, therefore, ineligible for adjustment of status pursuant to section 1 of the CAA.

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. She 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.