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

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[redacted]

FILE: [redacted] Office: ORLANDO, FLORIDA Date: NOV 07 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 PETITIONER: 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.

Ellen L. Johnson

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 The District Director's decision will be withdrawn, and the matter will be remanded to him for further action.

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 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 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 found inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(I), 212(a)(2)(A)(i)(II), and 212(a)(2)(B) of the Immigration and Nationality Act (the Act). The District Director, therefore, denied the application. *See District Director Decision* dated November 24, 2004.

On notice of certification, 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.

The record reflects that on March 28, 2001, in Orlando, Florida, the applicant married [redacted] native and citizen of Cuba. Based on that marriage, on April 1, 2001, the applicant filed for adjustment of status under section 1 of the CAA.

The District Director denied the application after determining that the applicant's Cuban spouse, Mr[redacted] was convicted of crimes involving moral turpitude, a violation of any law relating to a controlled substance and having been convicted of two or more offenses for which the aggregate sentences to confinement were 5 years or more. The District Director concluded that Mr.[redacted]s ineligible for adjustment of status to permanent residence, pursuant to section 1 of the CAA of November 2, 1966. The District Director denied M[redacted] application and certified his decision to the AAO for review.

The AAO reviewed the District Director's decision and concluded that Mr.[redacted]as not inadmissible to the United States for a violation of any law relating to a controlled substance. The AAO determined that M[redacted] appears to have the family member required to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) under section 212(h) of the Act. The AAO remanded Mr.[redacted]se to the District Director in order to allow Mr.[redacted]he opportunity to submit a Form I-601 if it is determined that he has the qualifying family member.

If it is determined that the applicant's spouse is eligible to file a Form I-601, and if the application is granted, the applicant may be eligible for adjustment of status pursuant to section 1 of the CAA of November 2, 1966.

Accordingly the District Director's decision will be withdrawn and the record will be remanded to him to wait for the decision on the applicant's spouse's eligibility to file a Form I-601 prior to making a decision on the applicant's case.

ORDER: The District Director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion.