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

U.S. Citizenship and Immigration Services

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PUBLIC COPY

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[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: NOV 08 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 APPLICANT:

[redacted]

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 The District Director's decision will be withdrawn, and the matter will be remanded to him for further action.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 Argentina 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 child of a native or citizen of Cuba, pursuant to section 1 of the CAA of November 2, 1966, because he and his mother are not residing with his Cuban citizen stepfather. The District Director, therefore, denied the application. *See District Director Decision* dated February 15, 2005.

The record reflects that on October 21, 2003, in Miami Beach, Florida, the applicant's mother married [redacted] 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 November 28, 2003, the applicant filed for adjustment of status under section 1 of the CAA.

On February 11, 2005, the applicant and his mother appeared before Citizenship and Immigration Services (CIS) for an interview regarding their applications for permanent residence. During the interview the applicant's mother stated that the applicant's stepfather had abandoned their home and she did not know his whereabouts. The record reflects that on January 20, 2005, CIS received a letter from Mr. [redacted] in which he stated that he and the applicant's mother did not reside together, that he had moved out of the apartment and he would be filling for a divorce. In addition, on February 11, 2005, in a sworn statement, Mr. [redacted] stated that he left the home in early January 2005 and that the applicant's mother used him in order to obtain status.

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 in which she states that the application was wrongfully denied because the applicant's mother informed the interviewing officer that she was a victim of domestic violence. Counsel states that the applicant's mother submitted a statement stating that she was a victim of domestic violence and a police report filed against the applicant's stepfather regarding threatening phone calls. Furthermore counsel states that the fact that the applicant does not reside with his stepfather is not an impediment to his ability to adjust status under the provisions of the CAA. Counsel provides a copy of the amended Cuban Adjustment Act, which allows battered spouses and children to adjust to permanent resident status under the CAA

without having to demonstrate that they reside with their Cuban spouse or parent in the United States. Finally, counsel requests that the application be remanded to the District Director for re-adjudication.

The AAO agrees with counsel and finds that the District Director erred in denying the application based on the fact that the applicant does not reside with his Cuban citizen stepfather.

The Victims of Trafficking and Violence Protections Act of 2000 (Public Law 106-386, 114 Stat. 1464) amended section 1 of the CAA of November 2, 1966, and states in section 1509:

> Access to Cuban Adjustment Act for battered immigrant spouses and children.
>
> > (a) IN GENERAL- The last sentence of the first section of Public Law 89-732 (November 2, 1966; 8 U.S.C. 1255 note) is amended by striking the period at the end and inserting the following: ", except that such spouse or child who has been battered or subjected to extreme cruelty may adjust to permanent resident status under this Act without demonstrating that he or she is residing with the Cuban spouse or parent in the United States. In acting on applications under this section with respect to spouses or children who have been battered or subjected to extreme cruelty, the Attorney General shall apply the provisions of section 204(a)(1)(H)."

Based on the above fact the AAO finds that the applicant may be eligible to adjust his status under section 1 of the CAA of November 2, 1966, if he can prove that he has been battered of subject to extreme cruelty. Accordingly, the District Director's decision will be withdrawn and the record will be remanded to him in order to allow the applicant the opportunity to prove that he was battered or subjected to extreme cruelty by his Cuban citizen stepfather.

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