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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

A2

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 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.

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 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 entered the United States without inspection and was not paroled or admitted as a nonimmigrant. The District Director, therefore, denied the application. *See District Director's Decision* dated February 8, 2005.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the Director's findings. No additional evidence has been entered into the record.

The record reflects that on December 12, 1997, in Maracaibo, Venezuela, the applicant married [redacted] a native and citizen of Cuba. Based on that marriage, on April 30, 2004, the applicant filed for adjustment of status under section 1 of the CAA.

The statute clearly states that the provisions of section 1 of the CAA of November 2, 1966, shall be applicable to the spouse and child of any alien described in this subsection. In order for the applicant to be eligible for the benefits of section 1 of the CAA, he or she must be the spouse of a native or citizen of Cuba who has been inspected and admitted or paroled into the United States, and who has been physically present in the United States for at least one year. *See Matter of Milian*, 13 I&N Dec. 480 (Acting Reg. Comm. 1970) (applying the physical presence requirement as amended by Refugee Act of 1980, Pub. L. No. 96-212, sec. 203(i), 94 Stat. 102, 108 (1980)).

In the present case, the applicant's spouse was not inspected and admitted as a nonimmigrant or paroled into the United States. The applicant's spouse's application was denied because it was determined that he entered the United States without inspection. Therefore, the benefits of section 1 of the CAA are not available to the applicant.

Accordingly, the applicant is ineligible for adjustment of status to permanent residence, pursuant to section 1 of the CAA of November 2, 1966. The decision of the District Director to deny the application will be affirmed.

ORDER: The District Director's decision is affirmed.