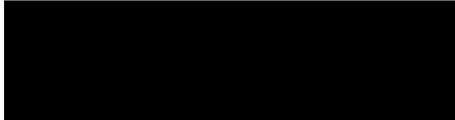




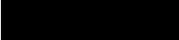
U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy**

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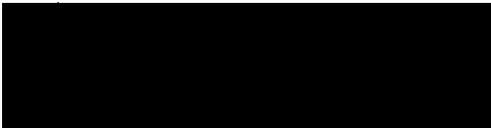
A2

FILE:  Office: MIAMI, FLORIDA Date: **NOV 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:



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 AAO affirmed the decision of the District Director to deny the application. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed and the previous decisions of the District Director and the AAO will be affirmed.

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 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 Decision* dated April 14, 2004. The decision was affirmed by the AAO. *See AAO's decision*, dated September 9, 2004.

The regulation at 8 C.F.R. § 103.5 states in pertinent part, that:

Reopening or reconsideration.

(a) Motions to reopen or reconsider in other than special agricultural worker and legalization cases--

(1) When filed by affected party--

(i) General. . . . Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

As note above, the AAO affirmed the District Director's decision on September 9, 2004. The motion to reopen was filed on April 11, 2005, six months after the District Director's decision was affirmed. Counsel fails to provide any reasons as to why the motion to reopen was not filed within 30 days of the decision.

This office finds that the failure to file a motion to reopen within the allotted time was not reasonable and beyond the control of the applicant. Therefore, a favorable exercise of the Secretary's discretion is not warranted and the motion to reopen will be dismissed.

ORDER: The motion is dismissed and the prior AAO decision is affirmed.