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

A2

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: NOV 18 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: 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 Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The Acting District Director's decision will be affirmed.

The applicant is a native and citizen of Chile 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 Acting 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 and her spouse are not residing together. *See Acting District Director's Decision* dated July 6, 2005.

The record reflects that on December 13, 2002, at Coral Gables, Florida, the applicant married 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 11, 2003 the applicant filed for adjustment of status under section 1 of the CAA.

On July 6, 2005, the applicant appeared before Citizenship and Immigration Services (CIS) for an interview regarding the application for permanent residence. On the same date, the applicant stated that her Cuban citizen spouse had abandoned their home and she did not know his whereabouts.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the Acting District Director's findings. The applicant submits a letter, several pictures with family and friends, a copy of a car insurance document, copies of bills under both names, and statements from individuals who indicated that they knew that the applicant and were married, in an attempt to establish the bona fide nature of their relationship. In her letter the applicant states that her marriage with was based on love and consideration. The applicant further states that her spouse had left their house previously because he suffers from depression. Furthermore, the applicant states that has never been abusive to her or her daughter. The applicant does not dispute the fact that she and her spouse do not reside together, but requests that her application be reconsidered because it will make it harder for her family.

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.