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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: NOV 30 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.

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 Ecuador 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 child of a native or citizen of Cuba, pursuant to section 1 of the Act of November 2, 1966, because she is not a child as defined by section 101(b)(1) of the Immigration and Nationality Act (the Act). The Acting District Director, therefore, denied the application accordingly. *See Acting District Director's Decision* dated June 28, 2005.

The record reflects that on June 22, 2002, at Miami, Florida, the applicant's mother 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 May 31, 2005, the applicant filed for adjustment of status under section 1 of the CAA.

Section 101(b) of the Act provides, in pertinent part, that:

> (b) As used in titles I and II-
>
> (1) The term "child" means an unmarried person under twenty-one years of age . . .

Section 4 of the CAA states in pertinent part, that:

> Except as otherwise specifically provided in this Act, the definition contained in Section 101(a) and (B) of the Act shall apply in the administration of the Act. . . .

On June 6, 2005, the applicant appeared before Citizenship and Immigration Services, (CIS) for an interview regarding her application for permanent residence. The applicant was instructed to submit a Medical Examination of Aliens Seeking Adjustment of Status (Form I-693), and the final divorce decrees for her stepfather's prior marriages. On June 8, 2005, the applicant's attorney submitted the requested Form I-693 but was unable to submit the final divorce decrees for . In addition, CIS did not receive the results of the applicant's fingerprints by close of business on June 8, 2005, and therefore her background

clearance was not completed. With her application for adjustment of status, the applicant submitted a birth certificate that indicates that she was born on June 9, 1984, in Ecuador. The applicant turned 21 years of age on June 9, 2005, prior to the completion of her adjustment of status application. Therefore, she is no longer a "child" as defined by section 101(b)(1) of the Act.

Section 1 of the CAA is applicable to the spouse or child of an alien described in the CAA. In the instant case the applicant is not a "child" and therefore she is ineligible for adjustment of status pursuant to section 1 of the CAA.

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 he asserts that the Child Status Protection Act (CSPA) is applicable to the applicant since she filed her application for adjustment of status prior to her 21st birthday. Counsel refers to Section 8 of the CSPA that states in pertinent part:

. . .

> (3) an application pending before the Department of Justice or the Department of State on or after such date.

According to counsel, the applicant is covered by this section of the CSPA. In addition, counsel states that Congress intended to benefit all children subject to loss of rights due to "age out." Finally, counsel states the denial of June 28, 2005, should be withdrawn and the case remanded to the Miami office for further processing on the merits.

Counsel's statements are not persuasive. The intent of the CSPA, as with any statute, is to be found in the language of the statute itself. *See Mallard v. United States Dist. Ct. for South.* Dist. of Iowa, 490 U.S. 296, 300 (1989); *INS v. Phinpathya*, 464 U.S. 183 189 (1984); *Richards v. United States*, 369 U.S. 1, 9 (1962). When the statutory text is clear, it is neither necessary, *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987), nor appropriate, id. at 452 (Scalia, J., concurring in the judgment), to consult any source outside the text to find the statute's purpose.

The language of the statute is clear and unambiguous. The CSPA deals with immediate relatives, unmarried sons and daughters of lawful permanent residents, derivatives of family and employment based petitions, diversity visa immigrants, asylum and refugee beneficiaries, and unmarried sons and daughters of naturalized citizens. Section 8 of the CSPA refers to the effective date of the CSPA. Under the literal language of the statute, the CSPA applies only to immigrant visa categories specified in the statute and the law does not contain a provision allowing for its application to individuals applying for adjustment of status under section 1 of the CAA of November 1, 1966.

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 Acting District Director to deny the application will be affirmed.

This decision is without prejudice to the filing of a Petition for Alien Relative (Form I-130) by the applicant's stepfather on behalf of the applicant.

ORDER: The Acting District Director's decision is affirmed.