

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



A2

FILE:  Office: MIAMI, FLORIDA Date: **OCT 18 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 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 Colombia 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 a child of a native or citizen of Cuba, pursuant to section 1 of the CAA of November 2, 1966, because her mother's marriage to her stepfather is not considered valid under the immigration laws. *See District Director's Decision* dated February 10, 2005.

The record reflects that on September 27, 2002, at Miami, Florida, the applicant's mother married [REDACTED] 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 December 30, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

The applicant's mother and her spouse (Mr. [REDACTED]) appeared before Citizenship and Immigration Services, (CIS) for an interview regarding the application for permanent residence. The District Director determined that Mr. [REDACTED] had been previously married and his first marriage had not been terminated when he married the applicant's mother on September 27, 2002. Since Mr. [REDACTED] previous marriage was not terminated on the date of his marriage with the applicant's mother, the claimed relationship between the applicant and Mr. [REDACTED] is not valid and the application for adjustment was denied accordingly.

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

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 he 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.