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

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: MIAMI, FLORIDA Date: SEP 29 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 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 Cuba 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 District Director found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant failed to show that he has a qualifying family member in order to be eligible to file for a waiver of inadmissibility under section 212(i) of the Act. The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See District Director's Decision* dated January 27, 2005.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that on May 31, 2002, at Miami, Florida, Florida, the applicant married [redacted] a native and citizen of Peru. The record further reflects that on June 12, 2002, the applicant and Ms. [redacted] filed applications for adjustment of status under section 1 of the CAA.

On June 24, 2004, the applicant and his spouse [redacted] appeared before Citizenship and Immigration Services, (CIS) for an interview regarding the applications for permanent residence. The applicant and [redacted] were each placed under oath and questioned separately regarding their domestic life and shared

experiences. Citing *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983), and *Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975), the District Director maintained that when there is reason to doubt the bona fides of a marital relationship, evidence must be presented to show that the marriage was not entered into solely for the purpose of circumventing the immigration laws of the United States. The District Director determined that the discrepancies encountered at the interview, and the lack of material evidence presented, strongly suggest that the applicant and his spouse entered into a marriage for the primary purpose of circumventing the immigration laws of the United States. On January 27, 2005, the District Director denied Ms. application for adjustment of status. The decision was affirmed by the AAO.

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, an Application for Waiver of Grounds of Inadmissibility (Form I-601), a copy of the applicant's marriage certificate, a copy of the applicant's spouse's lawful permanent resident card and a copy of the applicant's birth certificate. In his brief counsel states that the applicant has the qualifying relatives required to file a waiver under section 212(i) of the Act, his spouse and son. In addition counsel states that the applicant's family members would suffer extreme hardship if he were removed to Cuba. Counsel also states that the applicant has a long period of residence in the United States, has remarried his previous spouse, they have been living as a couple for more than 50 years and have two children residing in the United States, and if the applicant is removed the separation would have a devastating effect on all of them.

The record of proceedings in the present case is for the certification of the denial of the applicant's application for adjustment of status pursuant to section 1 of the CAA and not for a waiver under Section 212(i) of the Act. Before the AAO can make a decision, whether the applicant is eligible to file a waiver, the grounds of inadmissibility must be established. It is not clear from the record of proceedings that the applicant is inadmissible under 212(a)(6)(C) of the Act.

The principal elements of the ground of inadmissibility contained in section 212(a)(6)(C)(i) of the Act, are (1) fraud or (2) willfulness and (3) materiality. Fraud or a willful misrepresentation may be committed by the presentation of either an oral or written statement to a United States Government official. Fraud requires that the respondent know the falsity of his or her statement, intent to deceive the Government official, and succeed in this deception. *Matter of G--G--*, 7 I&N Dec. 161 (BIA 1956). In *Matter of S-* and *B-C-*, 9 I&N Dec. 436 (BIA 1960; A.G. 1961), the Attorney General established that a misrepresentation is considered to be material if the respondent is excludable on the true facts; and the misrepresentation tends to shut off a line of inquiry relevant to the visa, document, or other benefit procured or sought to be procured that might have resulted in the alien's exclusion. However, a "harmless" misrepresentation that does not affect admissibility is not "material." *Matter of Martinez- Lopez,* 10 I&N Dec. 409, 414 (BIA 1962; A.G. 1964) (finding no materiality in the alien's misrepresentation of a job offer where he was not likely to become a public charge); *Matter of Mazar,* 10 I&N Dec. 80, 86 (BIA 1962) (finding no materiality in nondisclosure of involuntary communist party membership that would not have resulted in a determination of excludability).

The applicant in the present case could have been granted lawful permanent resident status based on the true facts and therefore his marriage to Ms. did not affect the applicant's admissibility to the United States. In view of the foregoing, this office finds that the applicant is not inadmissible under section 212(a)(6)(C) of the Act.

Although the applicant is not inadmissible pursuant to section 212(a)(6)(C) of the Act, the AAO finds him subject to section 204(a)(c)(2) of the Act, which states in pertinent part:

> (c) Notwithstanding the provisions of subsection (b) no petition shall be approved if . . . (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The applicant admitted in writing that he married [redacted] to help her adjust her status to that of a permanent resident and have his immigration application completed. He further stated that he and [redacted] never resided together as husband and wife and that their marriage was fraudulent.

The applicant is subject to the provisions of section 204(c) of the Act, and he is statutorily ineligible to receive any relief under the Act.

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. He 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.