U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

A2

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: SEP 2 9 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 District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The District Director's decision will be withdrawn, and the matter will be remanded to him for further action.

The applicant is a native and citizen of Colobmia 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 and her spouse are not residing together. *See District Director's Decision* dated July 15, 2004.

The record reflects that on May 28, 2002, at Coral Gables, Florida, the applicant 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 June 11, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

The record of proceedings reveals that a former District Adjudications Officer (DAO) who was arrested and subsequently convicted for his involvement in a marriage fraud scheme, provided the applicant with a stamp indicating that permanent residence status had been granted effective May 28, 2002. On May 20, 2004, the District Office issued a Notice Reopening Adjustment of Status Proceedings and a new appointment notice was forwarded to the applicant in order to appear before Citizenship and Immigration Services, (CIS) for an interview regarding the application for permanent residence.

On July 15, 2004, the applicant appeared before CIS for an interview regarding her application for permanent residence. During the interview, she stated that she had paid an individual $1000.00 for Service fees. In addition that applicant stated that she and her spouse, Mr. [redacted] were separated and she did not know his whereabouts.

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.

The record of proceedings does not contain notes regarding her adjustment of status interview and does not indicate what information was submitted at that time to establish whether she was eligible for adjustment of status pursuant to section 1 of the CAA.

The AAO finds that the District Director did not follow the proper procedures for rescinding lawful permanent resident status as described in 8 C.F.R. § 246.1. The applicant was given an appointment for a *de novo* interview regarding her application for adjustment of status. Based the applicant's statement during her *de novo* interview the District Director concluded that the applicant was ineligible for adjustment of status pursuant to section 1 of the CAA of November 2, 1966.

The regulation at 8 C.F.R. § 246.1 states:

> If it appears to a district director that a person residing in his or her district was not in fact eligible for the adjustment of status made in his or her case, or it appears to an asylum office director that a person granted adjustment of status by an asylum officer pursuant to 8 C.F.R. § 240.70 was not in fact eligible for adjustment of status, a proceeding shall be commenced by the personal service upon such person of a notice of intent to rescind, which shall inform him or her of the allegations upon which it is intended to rescind the adjustment of his or her status. In such a proceeding the person shall be known as the respondent. The notice shall also inform the respondent that he or she may submit, within thirty days from the date of service of the notice, an answer in writing under oath setting forth reasons why such rescission shall not be made, and that he or she may, within such period, request a hearing before an immigration judge in support of, or in lieu of, his or her written answer. The respondent shall further be informed that he or she may have the assistance of or be represented by counsel or representative of his or her choice qualified under part 292 of this chapter, at no expense to the Government, in the preparation of his or her answer or in connection with his or her hearing, and that he or she may present such evidence in his or her behalf as may be relevant to the rescission.

In rescission proceedings, the Government bears the burden of proving ineligibility for adjustment of status by clear, unequivocal, and convincing evidence. *Waziri v. INS*, 392 F.2d 55 (9th Cir. 1968); *Matter of Pereira*, 19 I&N Dec. 169 (BIA 1984).

The applicant in the present case was provided with a stamp granting her permanent resident status. That status has not been rescinded through proper procedures. The District Director's decision will be withdrawn and the record will be remanded to him in order to comply with the regulations at 8 C.F.R. § 246.1.

ORDER: The District Director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion.

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FILE: [redacted] Office: MIAMI, FLORIDA Date: SEP 29 2005

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