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

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PUBLIC COPY

U.S. Citizenship and Immigration Services

A2

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: AUG 2 8 2008

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, Chief
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 The Acting District Director's decision will be withdrawn, and the matter will be remanded to her for further action.

The applicant is a citizen of Venezuela who filed an 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, because her spouse is not a native or citizen of Cuba. *See Acting District Director's Decision* dated May 4, 2006.

The record reflects that on December 22, 1998, at Miami Beach, Florida, the applicant married citizen of Venezuela. Based on that marriage, on April 29, 2005, the applicant filed for adjustment of status under section 1 of the CAA. The record further reflects that the Acting District Director denied Mr. application for adjustment of status pursuant to section 1 of the CAA after he failed to establish that he is a citizen of Cuba.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. In response to the notice of certification counsel submits the same documentation he submitted for the applicant's spouse's case

The AAO reviewed the Acting District Director's decision regarding application for adjustment of status and remanded it to the Acting District Director in order to allow opportunity to submit documentation indicating that he is a Cuban citizen, or explain why documents that would establish his citizenship are unavailable.

If it is determined that the applicant's spouse is a Cuban citizen, the applicant may be eligible for adjustment of status pursuant to section 1 of the CAA of November 2, 1966. Accordingly the Acting District Director's decision will be withdrawn and the record will be remanded to her to wait for the decision on the applicant's spouse's application prior to making a decision on the applicant's case.

ORDER: The Acting District Director's decision is withdrawn.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