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

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: AUG 2 8 2006

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 affirmed.

The applicant is a native and citizen of Argentina 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. This Act 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 he entered into the marriage for the primary purpose of circumventing the immigration laws of the United States. *See District Director Decision* dated April 25, 2005. On review, the AAO withdrew the District Director's decision and approved the application. *See AAO's Decision* dated December 5, 2005. The Acting District Director filed a Motion to Reconsider and/or Motion to Reopen (MTR) which the AAO granted. The AAO withdrew the previous decision and remanded the case for further action. *See AAO's Decision* dated March 10, 2006. The Acting District Director determined that the applicant and his spouse are not residing together and denied the application accordingly. *See Acting District Director's Decision* dated May 23, 2006.

The record reflects that on February 23, 2003, at Miami, Florida, the applicant 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 March 20, 2003, the applicant filed for adjustment of status under section 1 of the CAA.

Based on the AAO's decision, dated March 10, 2006, the Acting District Director requested that Immigration and Customs Enforcement (ICE) conduct an investigation regarding the validity of the applicant's marriage to . The report states that on April 27, 2006, ICE agents interviewed During the interview that she has been separated from the applicant for approximately two years and that she never resided with the applicant at the address he provided in his application for adjustment of status. admitted in writing and under oath that she and the applicant do not live together and she is in the process of getting a divorce.

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.

Although the provisions of section 1 of the CAA are applicable to the spouse or child of an alien described in the CAA, it has been held in *Matter of Bellido*, 12 I&N Dec. 369 (Reg. Comm. 1967), that an applicant who is not a native or citizen of Cuba and is not residing with the Cuban citizen spouse in the United States, is ineligible for adjustment of status pursuant to section 1 of the CAA.

The applicant is not a native or a citizen of Cuba, nor is he residing with his Cuban citizen spouse as husband and wife. He is, therefore, ineligible for adjustment of status pursuant to section 1 of the CAA. 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 Acting District Director to deny the application will be affirmed.

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