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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship
and Immigration
Services

A2

[REDACTED]

FILE:

Office: MIAMI, FLORIDA

Date: OCT 23 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 Panama 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 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 entered into the marriage for the primary purpose of circumventing the immigration laws of the United States. *See District Director's Decision* dated November 9, 2004.

The record reflects that on July 29, 2002, at Miami, Florida, the applicant married [REDACTED] a native and citizen of Cuba. Based on that marriage, on September 6, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

On September 8, 2003, the applicant and her spouse, [REDACTED] appeared before Citizenship and Immigration Services (CIS) for an interview regarding her application 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 during the interview, and the lack of material evidence presented, strongly suggested that the applicant and her spouse entered into a marriage for the primary purpose of circumventing the immigration laws of the United States.

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 a Motion to Reconsider (MTR), a copy of the applicant's marriage certificate, photographs of the applicant with her spouse and friends, affidavits from friends regarding the applicant's marriage to [REDACTED] copies of pay stubs for the applicant and her spouse, copies of tax returns, and a copy of an envelope addressed to the applicant dated April 21, 2005. In his brief, counsel states that the applicant has been living with her Cuban spouse since August of 2001. In addition, counsel alleges that the applicant and her spouse have a true, real and bona fide marriage that can be

corroborated with the evidence presented. Additionally, counsel states that any discrepancies that may have occurred during the interview do not warrant the severe hardship that will result to the applicant if she is not allowed to adjust her status. Finally, counsel asserts that based on the evidence submitted and the humanitarian grounds that exist in this case the AAO should grant the MTR and reopen the matter in order to allow the applicant to pursue her application for permanent residence.

As noted above with the MTR, counsel submits a copy of an envelope in an effort to show that although the decision was dated November 9, 2004, it was not forwarded to the applicant until April 21, 2005. The AAO acknowledges that the decision was forwarded to the applicant late and it will consider counsel's MTR as a response to the notice of certification. The AAO will review the case based on the documentation in the record of proceeding. In his MTR counsel does not address the discrepancies that occurred during the couple's interview.

A review of the recently submitted documentation and the documentation contained in the record of proceedings does not overcome the discrepancies that were encountered during their interview on September 8, 2003.

Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that she is eligible for adjustment of status. Further, *Matter of Marques*, 16 I&N Dec. 314 (BIA 1977), held that when an alien seeks favorable exercise of the discretion of the Attorney General, it is incumbent upon him to supply the information that is within his knowledge, relevant, and material to a determination as to whether he merits adjustment. When an applicant fails to sustain the burden of establishing that he is entitled to the privilege of adjustment of status, her application is properly denied. Here, the applicant has not met that burden. Accordingly, the District Director's decision will be affirmed.

ORDER: The District Director's decision is affirmed.