

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



A2

FILE:



Office: ORLANDO, FLORIDA

Date:

APR 03 2008

IN RE:

Applicant:



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, Chief
Administrative Appeals Office

DISCUSSION: On November 24, 2004, the District Director, Miami, Florida denied the application and certified his decision to the Administrative Appeals Office (AAO). On November 7, 2005, the AAO remanded the matter to the District Director to allow the applicant's spouse to submit a Form I-601, Application for Waiver of Grounds of Inadmissibility, under section 212(h) of the Act. On May 8, 2007, the Interim District Director, Orlando, Florida denied the Form I-601 filed by the applicant's spouse. On May 10, 2007, the Interim District Director issued a second denial of the applicant's adjustment application and again certified the decision to the AAO for review. The Interim District Director's decision will be affirmed.

The applicant is a native and citizen of Venezuela 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 Interim 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 her spouse's application to adjust his status to lawful permanent resident was denied. *See Interim District Director's decision*, dated May 10, 2007.

The provisions of section 1 of the CAA are applicable to the spouse or child of an alien described in the CAA. As the applicant's spouse is inadmissible to the United States and therefore not eligible to adjust his status to lawful permanent resident, the applicant is not eligible to adjust her status to lawful permanent resident under 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 she is eligible for adjustment of status. She has not met that burden. The decision of the Interim District Director to deny the application is affirmed.

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