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

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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: MIAMI, FL Date: FEB 01 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:

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: The application was denied by the District Director, Miami, Florida, who certified her decision to the Administrative Appeals Office (AAO) on appeal. The District Director's decision will be affirmed.

The applicant is a native and citizen of Colombia 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 child of a native or citizen of Cuba, pursuant to section 1 of the CAA of November 2, 1966, because his mother's marriage to a Cuban native or citizen was invalid due to a prior invalid divorce. *See District Director's decision*, dated September 13, 2007.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. The applicant did not submit any additional brief or written statement.

The provisions of section 1 of the CAA are applicable to the spouse or child of an alien described in the CAA. The AAO concurs with the District Director's finding. As the marriage of the applicant's mother to a native or citizen of Cuba is invalid, the applicant's mother is not allowed to adjust his status to lawful permanent resident under the CAA. As such, the applicant is not a child of a native or citizen of Cuba and is therefore not eligible to adjust his 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 he is eligible for adjustment of status. He has not met that burden. The decision of the District Director to deny the application is affirmed.

ORDER: The District Director's decision is affirmed.