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



U.S. Citizenship
and Immigration
Services

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FILE:

Office: MIAMI, FL

Date: JAN 24 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: The Acting District Director, Miami, Florida denied the application for adjustment of status and then certified the decision to the Administrative Appeals Office (AAO) for review. The decision of the Acting District Director will be affirmed.

The applicant is a native and citizen of Bolivia who filed this application for adjustment of status to that of a lawful permanent resident under Section 1 of Pub. L. 89-732 (November 2, 1966), as amended, the Cuban Adjustment Act.

The Cuban Adjustment 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 Acting District Director determined that the applicant was not eligible for adjustment of status because his mother had failed to demonstrate that her marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States. The applicant therefore is not established as the child of a native or citizen of Cuba who is eligible to adjust his status under the Cuban Adjustment Act. The Acting District Director, therefore, denied the application and certified the decision to the AAO. *Decision of the Acting District Director*, dated August 7, 2006.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the Acting District Director's findings. No additional brief or written statement is found in the record.

The Acting District Director found that the applicant's mother's marriage to her spouse was fraudulent, based on the conflicting testimony provided by the applicant's mother and her spouse during the adjustment of status interview and the lack of material evidence presented in support of the bona fides of her marriage. *Decision of the Acting District Director*, dated August 7, 2006. Additionally, the applicant's mother had testified that she married in order to obtain an alien registration card. *Id.*

As the AAO has found that the applicant's mother's marriage to her spouse is not valid, it finds that the applicant is not eligible to adjust his status to lawful permanent resident as a child under the Cuban Adjustment Act.

An applicant must demonstrate by a preponderance of the evidence that he is eligible for the benefit sought. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, places the burden of proof upon the applicant to establish that eligibility. The applicant has not met his burden of proof. As such, the Acting District Director's decision is affirmed.

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