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U.S. Citizenship and Immigration Services

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NOV 30 2004

FILE: [redacted] Office: MIAMI, FLORIDA Date:
SRC-01-001-53250

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, Director
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 Peru 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 Act of November 2, 1966, because she not a childr as defined by section 101(b)(1) of the Immigration and Nationality Act (the Act). The District Director, therefore, denied the application.

The record reflects that on March 26, 1997, at Miami, Florida, the applicant's mother married Pablo Luis Lavilla, 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 September 28, 2000, the applicant filed for adjustment of status under section 1 of the CAA.

Section 212(a)(6)(E) of the Act provides, in pertinent part, that:

> (b) As used in titles I and II-
>
> > (1) The term "child" means an unmarried person under twenty-one years of age . . .

Section 4 of the CAA states in pertinent part, that:

> Except as otherwise specifically provided in this Act, the definition contained in Section 101(a) and (B) of the Act shall apply in the administration of the Act. . . .

On February 21, 2003, the applicant appeared before Citizenship and Immigration Services, (CIS) for an interview regarding the application for permanent residence. With her application for adjustment of status the applicant submitted a birth certificate that indicates that she was born on May 21, 1981 in Peru. Since the applicant had already turned 21 years of age on the day of the adjustment interview, she is no longer a "child" within the definition provided by section 101(b)(1) of the Act.

Section 1 of the CAA is applicable to the spouse or child of an alien described in the CAA. In the instant case the applicant is not a "child" and therefore she is ineligible for adjustment of status pursuant to section 1 of the CAA.

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.

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 failed to meet that burden. The decision of the District Director to deny the application will be affirmed.

This decision is without prejudice to the filing of a Petition for Alien Relative (Form I-130) by the applicant's stepfather on behalf of the applicant.

ORDER: The District Director's decision is affirmed.