U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: OCT 1 2 2004

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office for review. The District Director's decision will be affirmed.

The applicant is a native and citizen of the Dominican Republic 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 spouse of a native or citizen of Cuba, pursuant to section 1 of the Act of November 2, 1966, because the bona fides of her marriage was not proven. The District Director, therefore, denied the application. *See District Director Decision* dated June 12, 2004.

The record reflects that on September 27, 2002, at Miami, Florida, the applicant married [redacted], 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 30, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

On July 7, 2003, the applicant and her spouse were scheduled to appear before U.S. Citizenship and Immigration Services (USCIS) for an interview regarding the application for permanent residence. The applicant and her spouse failed to appear for the interview in order to establish the bona fides of the marriage and the application was denied. The applicant file a motion to reopen which was granted and a new interview appointment notice was mailed to the applicant. A new interview date was scheduled and on October 22, 2003, the applicant and her spouse were to appear before USCIS for an adjustment of status interview. Although the applicant was present her spouse failed to appear for the interview in order to establish the bona fides of the marriage.

The regulation at 8 C.F.R. § 103.2(b) states in pertinent part that if a petitioner or applicant fails to appear for a required interview, the application may be denied.

The bona fides of the marriage was not established and the application was denied accordingly. 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 the benefit sought. 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.