U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

A2

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date:

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

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 Costa Rica 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 CAA of November 2, 1966, because she entered into the marriage for the primary purpose of circumventing the immigration laws of the United States. *See District Director Decision* dated March 19, 2004.

The record reflects that on April 19, 2002, at Coral Gables, Florida, the applicant married 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 May 13, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

On December 10, 2002, the applicant and her spouse, Mr. appeared before the Immigration and Naturalization Service (now Citizenship and Immigration Services, "CIS") for an interview regarding the application for permanent residence. At that time it was decided that the case be continued and that the couple be scheduled to appear for an interview on March 11, 2003.

On March 11, 2003, the applicant and her spouse were each placed under oath and questioned separately regarding their domestic life and shared experiences. On May 21, 2003, the couple was giving an opportunity to review the discrepancies that were encountered on the March 11, 2003 interview. Citing *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983), and *Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975), the District Director maintained that when there is reason to doubt the bona fides of a marital relationship, evidence must be presented to show that the marriage was not entered into solely for the purpose of circumventing the immigration laws of the United States. The District Director determined that the discrepancies encountered at the interview, and the lack of material evidence presented, strongly suggest that the applicant and her spouse entered into a marriage for the primary purpose of circumventing the immigration laws of the United States.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. In response to the notice of certification, counsel submits an affidavit from the applicant and Mr. addressing the discrepancies made by the couple during the interview and other documentation submitted previously.

The AAO notes that although counsel submits an affidavit from the applicant and her spouse the record of proceedings does not contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28). Therefore the AAO will not be sending a copy of the decision to the attorney mentioned on the affidavit, but this office will accept the submitted information.

In the affidavit the applicant and Mr. state that their marriage was not entered into with the purpose of circumventing the immigration laws of the United States. In addition the applicant and Mr. address the discrepancies made by them during the interview and attribute the discrepancies to forgetfulness and misunderstanding and that at no time did they intent to mislead the interviewing officers. At no point during the interview did the applicant or Mr. state that they felt confused or did not understand a question and therefore the explanation is not persuasive.

A review of the recently submitted documentation, and the documentation in the record, when considered in its totality, cannot overcome the discrepancies that were encountered during the interview on March 11, 2003.

Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that she is eligible for adjustment of status. Further, *Matter of Marques*, 16 I&N Dec. 314 (BIA 1977), held that when an alien seeks favorable exercise of the discretion of the Attorney General, it is incumbent upon him to supply the information that is within his knowledge, relevant, and material to a determination as to whether he merits adjustment. When an applicant fails to sustain the burden of establishing that she is entitled to the privilege of adjustment of status, her application is properly denied.

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.