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

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U.S. Citizenship and Immigration Services

[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 The District Director's decision will be withdrawn, and the matter will be remanded to him for further action.

The applicant is a native and citizen of Cuba 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 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 District Director found the applicant inadmissible to the United States because she falls within the purview of section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See District Director's Decision* dated April 12, 2004.

The applicant has provided no statement or additional evidence on notice of certification.

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

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that on April 5, 2004, the applicant appeared before Citizenship and Immigration Services, (CIS) for a follow-up interview regarding her application for permanent residence. A former District Adjudications Officer who was arrested and subsequently convicted for his involvement in a marriage fraud scheme had provided the applicant with an ADIT stamp. In addition on April 5, 2004, the applicant provided a sworn statement in which she states that she had been engaged in marriage with the primary purpose of circumventing the immigration laws of the United States. The applicant is inadmissible under section 2121(a)(6)(C)(i) of the Act.

As stated above section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident spouse or parent.

A review of the documentation in the record reflects that at the time the applicant's application for adjustment of status was adjudicated she did not have a qualified family member in order to be eligible to file for a waiver under section 212(i) of the Act.

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 the applicant submits a divorce decree from her previous spouse issued by the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida on April 28, 2004. Additionally the applicant submits a marriage certificate indicating that she married a U.S. citizen on May 6, 2004. Therefore the applicant now has the required family member in order to be eligible to file a waiver application under section 212(i) of the Act.

Accordingly the District Director's decision will be withdrawn and the record will be remanded to him in order to give the applicant the opportunity to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) under section 212(i) of the Act.

ORDER: The District Director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion.