U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: NOV 08 2005

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 PETITIONER:

[redacted]

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 spouse of a native or citizen of Cuba, pursuant to section 1 of the CAA of November 2, 1966, because her marriage was not valid under the immigration laws. *See District Director's Decision* dated April 12, 2005.

The record reflects that on January 5, 2004, the applicant and Mr. [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, applied for and received a license to marry from the State of Florida, County of Dade. On January 8, 2004, the applicant married Mr [redacted] On June 4, 2004, the applicant filed for adjustment of status under section 1 of the CAA.

Citizenship and Immigration Services (CIS) informed the applicant that her marriage license was never fully completed and returned to the Clerk of the Circuit and County Courts, Miami-Dade County, Florida, as required by law, for processing. As a result, her marriage was never registered and the applicant could not provide a certified copy of a marriage certificate.

On notice of certification, the applicant submits a letter in which she states that she and Mr [redacted] got married on January 8, 2004 by a notary public and have been living together as husband and wife at the same residence since that date. She further states that after she discovered that her marriage license was never recorded in the courts she attempted to contact the notary public that performed the ceremony without success. The applicant does not dispute the fact that her marriage license was never recorded with the courts, but states that it is was the notary public's obligation to file the necessary paperwork and not hers. Finally, the applicant requests that her application be granted since it was the notary public who failed to record the license with the courts and not her.

Section 741.08 of the Florida Statutes states in pertinent part that:

> ". . . shall require of the parties a marriage license issued according to the requirements of section 741.01 and within ten days after solemnizing the marriage he or she shall make a certificate thereof on the license, and shall transmit the same to the office of the county court judge or clerk of the circuit court from which was issued."

The fact remains that the marriage license was never recorded with the office of the county court judge or the clerk of the circuit court and therefore the marriage is not valid under Florida State law. Since the applicant's marriage is not valid under Florida State law, it cannot be considered valid under the immigration laws.

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. Here, the applicant has not met that burden. Accordingly, the District Director's decision will be affirmed.

The AAO notes that the applicant was issued a marriage certificate on March 14, 2005, based on a new marriage with M[redacted] Therefore the decision is without prejudice to the filing of a new application for adjustment of status now that the applicant has the appropriate proof of marriage.

ORDER: The District Director's decision is affirmed.