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

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[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: NOV 15 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 APPLICANT:

[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 Colombia 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's Decision* dated June 30, 2005.

The record reflects that on April 1, 2004, 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 April 20, 2004, the applicant filed for adjustment of status under section 1 of the CAA.

On March 29, 2005, the applicant and her spouse, Mr. [redacted], appeared before Citizenship and Immigration Services (CIS) for an interview regarding her application for permanent residence. The applicant and Mr. [redacted] were each placed under oath and questioned separately regarding their domestic life and shared experiences. 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 during the interview, and the lack of material evidence presented, strongly suggested 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 a brief, pictures from the wedding ceremony and family functions showing the couple and the applicant's daughters together, copies of bank statements, tax returns, cancelled checks, and utility bills, document from an insurance company, a residential lease agreement, and other documentation in an attempt to establish the bona fide nature of their relationship. In her brief counsel states that due to the conviction of a District Adjudications Officer (DAO), for

his involvement in a marriage fraud scheme, the Miami's office attitude is that every applicant is committing fraud. In addition, counsel states that applicants under section 1 of the CAA wait sometimes up to four years before an interview is scheduled. Furthermore, counsel states that the DAO's in Miami see a "red flag" whenever a Colombian is involved in a marriage application. In her brief counsel attempts to address the discrepancies that arose during the couple's interviews and states that applicants and their spouses are intimidated by the cameras in the room, the questions posed by the DAO and the demeanor of the officers during the interviews. Counsel further states that many of the answers given by the applicant and her spouse were either similar to each other or complemented each other. According to counsel, the discrepancies during the interview were not material and should not be weighed heavily for the denial of the application for adjustment of status.

The record of proceedings in this case is for the denial of an Application to Register Permanent Residence or Adjust Status (Form I-485) and the AAO will not address the backlog of the district office, or counsel's allegation that the DAO's in Miami are prejudiced toward Colombian applicants.

Much of the documentation counsel submits was submitted previously and was mentioned in the District Director's decision. A review of the record of proceedings, and the explanation provided by counsel, reveals that some of the inconsistencies in the couple's testimony were minor and, therefore, are given little weight. These inconsistencies include the fact that the applicant's spouse did not have the house keys with him, and the date the couple opened a joint bank account. However, there were other more substantial inconsistencies that have not been adequately explained. Counsel did not explain the discrepancies in the couple's answers regarding the events that occurred after the marriage ceremony, who bought the wedding bands and whether Mr. [redacted]ever met the applicant's previous spouse. In addition, counsel's explanation of the couple's other contradictions, such as the number of times the applicant slept at Mr[redacted] house before their marriage, her employment, and their home telephone number, have not been explained in a convincing manner.

A review of the recently submitted documentation and the documentation contained in the record of proceedings do not overcome the discrepancies that were encountered during their interview on March 29, 2005.

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 he 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.