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

PUBLIC COPY

[redacted]

A2

FILE: [redacted] Office: MIAMI, FLORIDA Date: NOV 21 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 The District Director's decision will be withdrawn and the application will be approved.

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. This Act 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 he entered into the marriage for the primary purpose of circumventing the immigration laws of the United States. *See District Director Decision* dated June 3, 2005.

The record reflects that on November 4, 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 December 2, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

On November 18, 2003, the applicant and his spouse, Ms. [redacted] appeared before Citizenship and Immigration Services (CIS) for an interview regarding the application for permanent residence. The applicant and Ms. [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 his 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, the applicant submits a brief and documentation in an attempt to establish the bona fide nature of his marriage with the applicant. In his brief the applicant addresses the inconsistent statements made by him and his spouse during the interview and attribute these inconsistencies to Ms. [redacted] nervousness and not understanding some of the questions. The applicant

submits numerous photographs of himself with his spouse and other family members, copies of tax returns, bank records, cancelled checks, and a doctor's letter which states that Ms[redacted]s pregnant.

The applicant's explanation of the inconsistencies in the couple's testimony and a review of the recently submitted documentation and the documentation in the record of proceedings, when considered in its totality, establishes that the applicant and his spouse reside together as husband and wife.

Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. Here, the applicant has met that burden. Accordingly, the District Director's decision will be withdrawn, and the application will be approved.

ORDER: The District Director's decision is withdrawn. The application is approved.