U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: SEP 30 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: 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.

Ellen C. Johnson

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 her marriage is not considered valid under the immigration laws. *See District Director's Decision* dated January 21, 2005.

The AAO notes that the record contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28) that was signed by the applicant's spouse and not by the applicant. Therefore the AAO will not be sending a copy of the decision to the attorney mentioned on the Form G-28.

The record reflects that on November 18, 2001, at Miami, Florida, the applicant marrie[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 6, 2001, the applicant filed for adjustment of status under section 1 of the CAA.

On July 13, 2004, the applicant and her spouse [redacted] appeared before Citizenship and Immigration Services, (CIS) for an interview regarding the application for permanent residence. A review of [redacted] Service file revealed that during his application for adjustment of status he stated that he had been previously married in Cuba on December 27, 1991, and divorced in 1993. No divorce decree was presented as evidence that [redacted] prior marriage had been terminated.

[redacted] was questioned regarding his prior marriage and he stated that he had never been legally married. He further stated that he misunderstood the question on the Biographic Information (Form G-325A) and he does not know why his attorney stated on his Application to Register Permanent Residence or Adjust Status (Form I-485) that he was divorced.

[redacted] statements are not persuasive. By signing the applications the applicant certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. *See* 8 C.F.R. § 103.2(a)(2).

The District Director determined tha[redacted]had previously been married, and since his first marriage has not been terminated the applicant's present marriage cannot be considered valid under immigration laws. The application for adjustment of status was denied accordingly.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. No additional evidence has been entered into the record.

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.

ORDER: The District Director's decision is affirmed.