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



U.S. Citizenship
and Immigration
Services

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AJ

FILE:

Office: MIAMI, FLORIDA

Date:

JAN 13 2006

IN RE:

Applicant:

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:

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 El Salvador 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 did not qualify for adjustment of status as the spouse of a lawful permanent resident who adjusted under section 1 of the CAA. The District Director, therefore, denied the application. *See District Director Decision* dated May 25, 2005.

The record reflects that on July 16, 2003, at Miami, Florida, the applicant married [REDACTED] a native and citizen of Cuba. Based on that marriage, on September 11, 2003, the applicant filed for adjustment of status under section 1 of the CAA.

The Board, in *Matter of Quijada-Coto*, 13 I&N Dec. 740 (BIA 1971), held that adjustment of status to that of a permanent resident, pursuant to the provisions of the Act of November 2, 1966, is not available to the spouse of an alien described in section 1 of the Act, where the alien himself had been denied adjustment of status under the Act.

The District Director denied the application after determining that the applicant's Cuban spouse, [REDACTED] was denied permanent residence under section 1 of the CAA, after being found inadmissible under section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(C).

The District Director concluded that although [REDACTED] was not convicted of the charges filed against him there was sufficient reason to believe that he was excludable under section 212(a)(2)(C) of the Act. There is no waiver available to an alien found inadmissible under section 212(a)(2)(C) of the Act. The AAO affirmed the District Director's decision to deny [REDACTED] application.

Accordingly, the applicant is ineligible for adjustment of status to permanent residence, pursuant to section 1 of the CAA of November 2, 1966. The decision of the District Director to deny the application will be affirmed.

ORDER: The District Director's decision is affirmed.