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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: ORLANDO, FLORIDA

Date:

NOV 30 2007

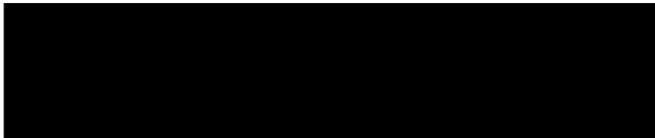
IN RE:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting Field Office Director, Orlando, Florida, who certified her decision to the Administrative Appeals Office (AAO) for review. The Acting Field Office Director's decision will be affirmed.

The applicant is a native and citizen of Ecuador 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 as the spouse of a Cuban native or citizen. 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 Acting Field Office 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 spouse's Form I-485, Application to Register Permanent Residence or Adjust Status, had been denied. *See Acting Field Office Director's decision*, dated July 23, 2007.¹

The record reflects that on January 11, 1996, an immigration judge ordered the applicant's spouse excluded from the United States. On July 23, 2007 Citizenship and Immigration Services (CIS) denied the Form I-485 for the applicant's spouse.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the Acting Field Office Director's findings. The applicant did not submit any additional brief or written statement.

The record establishes that the applicant is seeking adjustment under section 1 of the CAA as the spouse of a Cuban native or citizen. Accordingly, her eligibility for adjustment is through her spouse and is contingent on the determination made by Citizenship and Immigration Services (CIS) with regard to her spouse's Form I-485. As the record indicates that the Form I-485 filed by the applicant's spouse has been denied by CIS, the applicant, as a derivative beneficiary of her spouse's adjustment application, is ineligible for adjustment of status pursuant to section 1 of the CAA.

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. She has failed to meet that burden. The decision of the Acting Field Office Director to deny the application will be affirmed.

¹ The Acting Field Office Director found that the applicant was not a native or citizen of Cuba in her own right and that her eligibility for adjustment under the CAA was, therefore, contingent on that of her spouse.

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ORDER: The Acting Field Office Director's decision is affirmed.