U.S. Department of Homeland Security
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PUBLIC COPY

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA (ORLANDO) Date: FEB 01 2008

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified her decision to the Administrative Appeals Office (AAO) on appeal. The District Director's decision will be withdrawn and the application will be approved.

The applicant is a native and citizen of Venezuela 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 spouse adjusted his status to lawful permanent resident under the Nicaraguan Adjustment and Central American Relief Act (NACARA). *See District Director's Notice of Certification,* March 7, 2007. The District Director interpreted the language of section 1 of the CAA to mean that the applicant's spouse must have been admitted as a lawful permanent resident pursuant to section 1 under the CAA and must still be a lawful permanent resident. *Id.* The District Director subsequently denied the applicant's Application for Status as Permanent Resident under the Cuban Adjustment Act. *Form I-485.*

Counsel submits a statement asserting that the applicant is eligible to adjust under the CAA if the Cuban spouse meets all of the criteria of the CAA. *Attorney's statement*, dated April 6, 2007.

The provisions of section 1 of the CAA are applicable to the spouse or child of an alien described in the CAA. There is nothing in the plain language of the CAA that states that an applicant's spouse must have been admitted as a lawful permanent resident pursuant to section 1 under the CAA for the applicant to be able to adjust under section 1 of the CAA. The AAO has determined that the interpretation of *Matter of Milian*, 13 I&N Dec. 480 (Acting Reg. Comm. 1970) in previous unpublished AAO decisions was incorrect. An applicant need only show that his or her Cuban spouse meets all the criteria of the CAA, not that the Cuban spouse was admitted to the United States under section 1 of the CAA.

The applicant's spouse is a native of Cuba who entered without inspection on June 30, 1992. *Form I-485 for the applicant's spouse.* On December 16, 1999 he adjusted his status to lawful permanent resident under Section 202 of Public Law 105-100, The Nicaraguan Adjustment and Central America Relief Act (NACARA). *Form I-485 for the applicant's spouse.* The AAO finds that the adjustment of status of the applicant's spouse under NACARA constitutes an inspection and admission to the United States for the purposes of allowing the applicant to adjust her status under the CAA.

The AAO notes that the District Director did not make any findings concerning whether the applicant is, otherwise, eligible for adjustment under the provisions of the CAA. Nor did the District Director address whether the applicant merits a favorable exercise of discretion. The AAO has reviewed the record of proceedings, however. On the basis of this review, the AAO concludes that the applicant is otherwise eligible for adjustment, and also merits a favorable exercise of discretion. The application in the present case, therefore, will be approved

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 met that burden. The decision of the District Director to deny the application will be withdrawn and the application will be approved.

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