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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

[REDACTED]

Office: MIAMI, FL

Date:

MAR 24 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 District Director, Miami, Florida denied the application for adjustment of status and then certified the decision to the Administrative Appeals Office (AAO) for review. The decision of the District Director will be affirmed.

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 Pub. L. 89-732 (November 2, 1966), as amended, the Cuban Adjustment Act.

The Cuban Adjustment 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 District Director determined that the applicant was not eligible for adjustment of status because she has failed to demonstrate that her marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States. The District Director, therefore, denied the application and certified the decision to the AAO. *Decision of the District Director*, dated October 11, 2004.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. No additional brief or evidence is found in the record.

The District Director found that the applicant's marriage to her spouse was fraudulent based on the conflicting testimony provided by the applicant and her spouse during the adjustment of status interview in support of the bona fides of her marriage. *Decision of the District Director*, dated October 11, 2004.

The AAO observes that the record contains apartment rental lease agreements; bank statements; copies of bank and credit cards; a telephone bill; and a marriage certificate dated July 26, 2002.

Having reviewed the record, the AAO concurs with the District Director's decision. The applicant and her spouse provided different answers to questions regarding their living situation, most significantly how many lamps were in the bedroom; how many televisions were in the home; the locations of the VCR and DVD players; the number and color of telephones in the home; whether the bathroom contained a bathtub; and the types of valves in the bathroom shower and the kitchen sink. The applicant's spouse also did not know the applicant's middle name. The AAO finds that the inconsistencies in the testimony of the applicant and her spouse are not easily resolved. Moreover, there is nothing in the record to explain these inconsistencies. On certification, the applicant has failed to submit any evidence.

The AAO finds that the applicant has not met her burden of proof in showing that her marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States. A marriage entered into for the primary purpose of circumventing U.S. immigration laws is not recognized for the purpose of gaining immigration benefits. *See Matter of Laureano*, 19 I. & N. Dec. 1 (BIA 1983).

An applicant must demonstrate by a preponderance of the evidence that she is eligible for the benefit sought. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, places the burden of proof upon the applicant to establish that eligibility. The applicant has not met her burden of proof. As such, the District Director's decision is affirmed.

ORDER: The District Director's decision is affirmed.