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

U.S. Citizenship
and Immigration
Services

A2

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: APR 15 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 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, 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 he and his spouse are not residing together. *See District Director's Decision* dated September 13, 2004.

The record reflects that on June 13, 2002, at Miami, Florida, the applicant married [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 July 14, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

The record of proceedings reveals that a former District Adjudications Officer, who was arrested and subsequently convicted for his involvement in a marriage fraud scheme, had provided the applicant with a stamp indicating that permanent residence status had been granted. On June 24, 2004, the District Office issued a Notice of Reopening Adjustment of Status Proceedings and a new appointment notice was forwarded to the applicant in order to appear before Citizenship and Immigration Services, (CIS) for an interview regarding the application for permanent residence.

On July 27, 2004, the applicant appeared before CIS for an interview regarding the application for permanent residence. On the same date he stated that he and his Cuban citizen spouse were separated and that they never resided together as husband and wife. He further requested that he be granted an "S" visa based on his assistance in the investigation regarding the marriage fraud scheme.[1]

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.

Although the provisions of section 1 of the CAA are applicable to the spouse or child of an alien described in the CAA, it has been held in *Matter of Bellido*, 12 I&N Dec. 369 (Reg. Comm. 1967), that an applicant who

[1] The AAO will not address the issue of the "S" visa as it is not pertinent to the current proceedings.

is not a native or citizen of Cuba and is not residing with the Cuban citizen spouse in the United States, is ineligible for adjustment of status pursuant to section 1 of the CAA.

The applicant is not a native or a citizen of Cuba, nor is she residing with her Cuban citizen spouse in the United States. He is, therefore, 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 he is eligible for adjustment of status. The applicant has failed to meet that burden. The decision of the District Director to deny the application will be affirmed.

ORDER: The District Director's decision is affirmed.