

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

A2



FILE:



Office: MIAMI, FLORIDA

Date:

JUL 14 2005

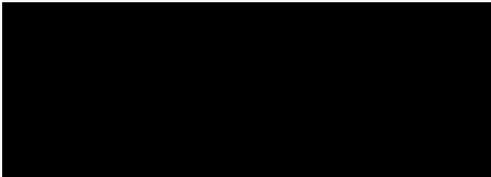
IN RE:

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 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 she and her spouse are not residing together. *See District Director's Decision* dated September 24, 2004.

The record reflects that on February 25, 2003, at [REDACTED] 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 March 26, 2003, the applicant filed for adjustment of status under section 1 of the CAA.

On July 13, 2004, the applicant appeared before Citizenship and Immigration Services (CIS) for an interview regarding the application for permanent residence. Her spouse, Mr. [REDACTED] did not accompany her to the interview. On the same date the applicant stated under oath in writing that her spouse left the house on June 22, 2004, because he claimed to be gay.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. In response to the notice of certification counsel stated that the applicant and Mr. [REDACTED] have been married in good faith since February 25, 2003. Counsel does not dispute the fact that the applicant's spouse left the house in June 2004. Counsel states that the applicant is separated from her spouse because she was exposed to psychological abuse. In addition counsel states that he will be sending a brief and/or evidence to the AAO within 30 days. Counsel dated his statement October 19, 2004, and as of this date approximately eight months later no additional documents have been received by the AAO.

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 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.

It is important to note that this is a very different standard from the one relating to spousal visa petition proceedings, where an applicant needs not prove marital viability, but rather the marriage was valid at its inception. See *Matter of McKee*, 17 I&N Dec. 332 (BIA 1980); *Matter of Boromand* 17 I&N Dec. 450 (BIA 1980).

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

This decision, however, is without prejudice to the filing of a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360), as a battered spouse.

ORDER: The District Director's decision is affirmed.