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



U.S. Citizenship  
and Immigration  
Services

A2



FILE:



Office: MIAMI, FLORIDA

Date:

JUN 06 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:

SELF-REPRESENTED

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, 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 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 she and her spouse are divorced. The District Director, therefore, denied the application. *See District Director Decision* dated September 29, 2004.

The record reflects that on March 24, 1997, at Hialeah, 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 August 19, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

On August 31, 2004, the applicant and her spouse (Mr. [REDACTED]) appeared before Citizenship and Immigration Services, (CIS) for an interview regarding the application for permanent residence. On the same day Mr. [REDACTED] stated in writing and under oath that he divorced the applicant in 2001 and that they are not living together.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. The applicant submits a letter in which she states that she married Mr. [REDACTED] on March 24, 1997 and they lived together until the end of 2000. She states that she moved in with a friend but kept a cordial dating relationship with him. In addition she states that she had no idea that Mr. [REDACTED] had divorced her in 2001 and she considered herself married until the day of her interview.

Public records reveal that the applicant's marriage to Mr. [REDACTED] was terminated in Broward County, Florida on June 5, 2001. Even if the applicant did not know that a divorce decree was issued she admits that she has not been living with her Cuban citizen spouse as husband and wife since 2000.

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.

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. 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.