U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

A2

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: SEP 27 2011

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 PETITIONER: 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.

Ellen C. Johnson

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. This 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 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 his spouse's divorce decree submitted during his application for adjustment was not considered valid under the immigration laws. *See District Director's Decision* dated November 17, 2004.

The AAO notes that the record contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28) that is signed by the applicant's spouse and not by the applicant. Therefore the AAO will not be sending a copy of the decision to the individual mentioned on the Form G-28.

The record reflects that on April 4, 2003, at Miami, Florida, the applicant married [redacted] native and citizen of Cuba. Based on that marriage, on May 7, 2003, the applicant filed for adjustment of status under section 1 of the CAA.

On October 18, 2004, during the adjustment of status interview the applicant presented a divorce decree between Ms. [redacted] nd her previous spouse issued on October 5, 2002, in Camaguey, Cuba. On the same date Ms. [redacted] stated that she and her previous spouse resided in Hialeah, Florida at the time that the divorce proceedings took place in Cuba.

In *Matter of Weaver*, 19 I&N Dec. 730 (BIA 1979), the Board of Immigration Appeals held that the validity of a divorce entered into while neither party to it is domiciled in the place where it was granted, but where both parties appeared for the divorce, should be judged by the law of the jurisdiction where the parties to the divorce were domiciled at the time of the divorce. In this case both parties to the divorce were residing in Miami, Florida during the time of the divorce. It has long been held that Florida courts will not recognize a foreign nation's divorce decree unless at least one of the spouses was a good faith domiciliary of the foreign nation at the time the decree was rendered.

The District Director determined that the divorce decree presented on behalf of the applicant's spouse was not valid for immigration purposes and his present marriage cannot be considered valid under the immigration laws. The application for adjustment of status was denied accordingly.

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.

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. He 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.