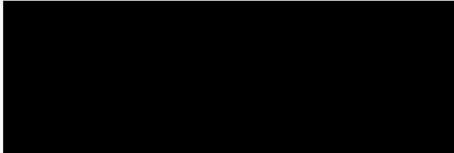


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FILE:



Office: MIAMI, FLORIDA Date:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 The District Director's decision was withdrawn, and the application was approved. The application is now before the AAO on a Service Motion to Reopen (MTR) from the Miami District. The MTR will be granted, the AAO's previous decision will be withdrawn, and the District Director's original decision will be affirmed.

The applicant is a native and citizen of Venezuela who filed an Application to Register Permanent Residence or Adjust Status (Form I-485) 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 child of a native or citizen of Cuba, pursuant to section 1 of the CAA of November 2, 1966, because his mother's marriage to his stepfather was deemed fraudulent. The District Director, therefore, denied the application. *See District Director Decision* dated March 25, 2005. On review, the AAO withdrew the District Director's decision and approved the application. *See AAO's Decision* dated February 1, 2006.

The record reflects that on March 2, 2002, at Coral Gables, Florida, the applicant's mother married [REDACTED] a native and citizen of Cuba. Based on that marriage, on March 8, 2002, the applicant filed for adjustment of status under section 1 of the CAA.

In her MTR, the District Director submits a divorce decree between the applicant's mother and [REDACTED] issued on December 8, 2005, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. In addition, the District Director submits a sworn statement by [REDACTED] in which he states that he and the applicant's mother have not been residing together since May 2005.

The AAO finds that in the motion to reopen, the District Director provides new information previously unavailable to the AAO. The applicant's mother is no longer married to a native or citizen of Cuba and, therefore, the claimed relationship between the applicant and [REDACTED] does not exist. Consequently, the applicant is ineligible for adjustment of status to permanent residence, pursuant to section 1 of the CAA of November 2, 1966. **As the final proceeding of his application for adjustment of status has not been completed, the applicant is not yet a permanent resident, so no further processing is necessary.**

Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish eligibility for adjustment of status. Here, the applicant has failed to meet that burden. Accordingly, the AAO's previous decision will be withdrawn and the District Director's original decision will be affirmed.

**ORDER:** The AAO's previous decision is withdrawn and the District Director's original decision is affirmed.