identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship
and Immigration
Services

A2

[redacted]

FILE: [redacted] Office: MIAMI, FL Date: FEB 07 2008

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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Acting District Director, Miami, Florida denied the application for adjustment of status and then certified the decision to the Administrative Appeals Office (AAO) for review. The decision of the Acting District Director will be affirmed.

The applicant is a native and citizen of Peru who filed this application for adjustment of status to that of a lawful permanent resident under Section 1 of Pub. L. 89-732 (November 2, 1966), as amended, the Cuban Adjustment Act.

The Cuban Adjustment 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 Acting District Director determined that the applicant was not eligible for adjustment of status because she failed to demonstrate that her mother's marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States. The Acting District Director, therefore, denied the application and certified the decision to the AAO. *Decision of the Acting District Director,* dated January 17, 2006. In a separate decision, the AAO has affirmed the Acting District Director's decision.

Upon notice of certification, the applicant was provided an opportunity to submit a brief or other written statement. The applicant did not submit any additional statements.

As the AAO has found that the applicant's mother does not qualify to adjust her status to lawful permanent resident under the Cuban Adjustment Act, it finds that the applicant is not eligible to adjust her status to lawful permanent resident under the Cuban Adjustment Act as the stepchild of a Cuban citizen.

In addition, the AAO notes that on March 3, 2006, after the Acting District Director's decision was certified to the AAO, the applicant married. Accordingly, the applicant is no longer a child pursuant to section 101(b)(1) of the Act and, even if her mother had been approved, is no longer eligible to adjust her status to lawful permanent resident as a stepchild of a Cuban citizen under the Cuban Adjustment Act. [1]

---

[1] The AAO notes that the applicant married a Cuban citizen. She filed a second Form I-485 Application to Register Permanent Residence or Adjust Status under the Cuban Adjustment Act, which was denied on August 3, 2006 by the Director of the National Benefits Center. The Director denied the Form I-485 because the applicant's spouse, although a native and citizen of Cuba, had adjusted his status to lawful permanent resident as the child of a refugee under section 209(a) of the Immigration and Nationality Act and not under the Cuban Adjustment Act. *Director's Decision*, dated August 3, 2006. The AAO notes that the provisions of section 1 of the Cuban Adjustment Act are applicable to the spouse or child of an alien described in the Cuban Adjustment Act. There is nothing in the plain language of the Cuban Adjustment Act that states that an applicant's spouse must have been admitted as a lawful permanent resident pursuant to

An applicant must demonstrate by a preponderance of the evidence that she is eligible for the benefit sought. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, places the burden of proof upon the applicant to establish that eligibility. The applicant has not met her burden of proof. As such, the decision of the Acting District Director is affirmed.

ORDER: The decision of the Acting District Director is affirmed.

---

section 1 under the Cuban Adjustment Act for the applicant to be able to adjust under section 1 of the Cuban Adjustment Act. The AAO has determined that the interpretation of *Matter of Milian*, 13 I&N Dec. 480 (Acting Reg. Comm. 1970) in previous unpublished AAO decisions was incorrect. An applicant need only show that his or her Cuban spouse or parent meets all the criteria of the Cuban Adjustment Act, not that the Cuban spouse or parent was admitted to the United States under section 1 of the Cuban Adjustment Act. The applicant's second Form I-485 may, therefore, have been denied in error.