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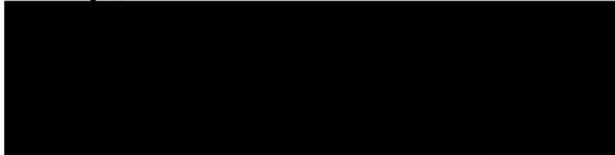
U.S. Department of Homeland Security  
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Washington, DC 20529



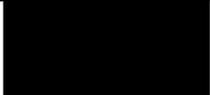
U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: MIAMI, FL

Date:

FEB 07 2008

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, 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 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.

A review of the record reveals that the applicant married her husband on December 18, 2004. *Marriage certificate*. The applicant's husband is a Cuban citizen. *See birth certificate*. The applicant's husband became a lawful permanent resident on October 17, 2001. *See lawful permanent resident card*.

Upon notice of certification, the applicant was provided an opportunity to submit a brief or other written statement. Counsel for the applicant submitted a brief; an affidavit from the applicant and her spouse; a 2004 tax statement and W-2 Forms; a letter from Washington Mutual Bank; a mortgage statement; a utility bill; a telephone bill; school certificates for the applicant's daughter; and family photographs.

The Acting District Director found that the applicant's marriage to her spouse was fraudulent based on the conflicting testimony provided by the applicant and her spouse during the adjustment of status interview and the applicant's failure to submit documentation in support of the bona fides of her marriage. *Decision of the Acting District Director*, dated January 17, 2006. In the affidavit from the applicant and her spouse submitted upon the notice of certification, the applicant and her spouse address the inconsistencies regarding their testimony at the interview. *See affidavit from the applicant and her spouse*, dated February 14, 2006. In their affidavit, the applicant and her spouse stated that at the time of the adjustment interview, the applicant's spouse was temporarily residing with his brother due to a domestic quarrel he was having with the applicant. *Id.* As a result of his temporary absence from the home, the applicant's spouse provided answers to questions such as who got out of bed first that morning, whether the applicant's spouse worked

the previous Saturday, and whether the applicant's children visited their biological father the previous Sunday based on the family's routine when he was residing with the applicant. *Id.* The applicant's spouse's answers differed from those of the applicant. *Decision of the Acting District Director*, dated January 17, 2006. The applicant and her spouse stated that they were never asked by the interviewing officer if they were residing together at the time of the interview. *Affidavit from the applicant and her spouse*. Counsel for the applicant asserts that the applicant did not have legal representation at the time of her interview, and that she and her spouse were separated for two weeks. *Attorney's brief*.

Regarding the documents submitted upon notice of certification, the AAO notes that the applicant and her spouse submitted a 2004 joint tax return listing them as married and living at the same address. *2004 tax statement*. The 2004 W-2 Forms accompanying the tax statement list the applicant and her spouse living at separate addresses. *See W-2 Forms*. The AAO notes that the applicant married her spouse on December 18, 2004 and that the applicant's spouse moved to [REDACTED] in August 2004 from the address listed on his W-2 Form. *Form G-325A, Biographic Information sheet for the applicant's spouse*. The record also includes a car insurance policy from June 29, 2005 to December 29, 2005 listing the applicant, her oldest daughter, and her spouse as drivers. *Statement from Mercury Insurance Company of Florida*, dated August 3, 2005. A statement from Washington Mutual Bank states that the applicant is ineligible to open a checking or savings account with any financial center for five years, thus explaining why the applicant and her spouse do not have a joint account. *Statement from Washington Mutual Bank*, dated October 13, 2005. Utility bills listed in the name of the applicant's spouse shows his address to be that of the applicant's home on [REDACTED] [REDACTED] which he moved into after their marriage. *Utility bills*, dated November 17, 2005 and December 22, 2005. A telephone bill and mortgage statement list the applicant as living at the same address on "[REDACTED] [REDACTED]". *See telephone bill and mortgage statement*, dated 2005. The record also includes photographs of the applicant and her spouse at various holiday gatherings and events. *See photographs*.

The AAO notes that the affidavit submitted by the applicant and her spouse indicates that some of the discrepancies in the information they provided in their individual interviews were the result of their separation at the time of the interview. They assert that the interviewing officer did not ask them if they were living together at the time of their interviews. The AAO notes, however, that many of the questions asked of the applicant and her spouse on January 9, 2006, most notably those seeking details from the weekend immediately preceding their interviews, were specifically intended to ascertain whether the applicant and her spouse were living together at the same residence. Accordingly, the AAO finds that the applicant and her Cuban spouse were questioned about whether they were living together. Further, it notes that when asked about each other's actions during the preceding weekend, both the applicant and her spouse were provided with the opportunity to inform the interviewing officer of their separation.

Spouses seeking adjustment under the CAA must, in addition to establishing a bona fide marriage to a Cuban spouse, be residing with their Cuban spouse in order to be statutorily eligible for the benefit. *See Gonzalez v. McNary*, 765 F.Supp. 721 (S.D. Fla. 1991), *aff'd* 980 F.2d 1418 (11<sup>th</sup> Cir. 1993). In the joint affidavit sworn with her spouse, the applicant states that, at the time of her adjustment interview, she and her Cuban husband were not living together and she does not state that they, as of the date of the affidavit, have reunited. Although counsel contends that the applicant's separation from her spouse lasted approximately two weeks, there is no evidence in the record that supports this claim. The documentation submitted to establish the co-residency of the applicant and her spouse dates from the period prior to the applicant's January 9, 2006 adjustment interview. Without supporting documentation, the assertions of counsel do not constitute

evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the record does not establish that the applicant is residing with her Cuban spouse, as required for adjustment under the CAA.

Moreover, the AAO also finds that, while some of the inconsistencies in the testimony of the applicant and her spouse, e.g., the differing colors of the shower curtain and who arose first on the day of the interview, may be attributed to a separation, others are not as easily resolved. The sworn statement of the applicant and her spouse explaining their inconsistent responses to such questions as who purchased their wedding rings and who attended their wedding is not sufficient, by itself, to overcome the Acting District Director's finding that their marriage was entered into primarily for the purpose of circumventing U.S. immigration laws. Going on record without supporting documentary evidence is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). On certification, the applicant has failed to submit any evidence in support of the statements made in the affidavit, including affidavits from individuals who would have first-hand knowledge of the applicant's life with her spouse.

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 in this particular case. As such, the decision of the Acting District Director is affirmed.

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