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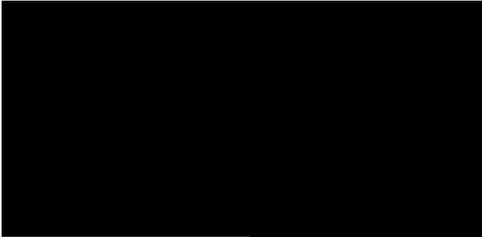
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: MIAMI, FL Date: **MAR 24 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:



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 her decision to the Administrative Appeals Office (AAO) on appeal. The District Director's decision will be withdrawn and the application will be approved.

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 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 her spouse had not adjusted his status to lawful permanent resident under section 1 of the CAA or under any other classification. *See District Director's Notice of Certification*, dated November 16, 2006. The District Director also noted that the applicant had divorced her spouse prior to his adjustment of status. *Id.* The District Director subsequently denied the applicant's Application for Status as Permanent Resident under the Cuban Adjustment Act. *Id.*

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. No additional written statement or evidence has been entered into the record.

The record reflects that on January 19, 2005, in Miami, Florida, the applicant married [REDACTED], a native and citizen of Cuba. *See marriage certificate; See also Cuban birth certificate.* [REDACTED] was paroled into the United States on November 8, 2003. *See Authorization for Parole of an Alien into the United States.* He has remained in the United States since that time. *Form G-325A, Biographic Information sheet.* On March 24, 2005, [REDACTED] applied to adjust his status to lawful permanent resident under section 1 of the CAA. *Form I-485, Application to Register Permanent Residence or Adjust Status.* His Form I-485 has not been adjudicated. On September 12, 2005 the applicant filed a Form I-485 as the spouse of a native or citizen of Cuba, pursuant to section 1 of the CAA. *Form I-485.* On February 12, 2005, [REDACTED] was arrested for simple battery domestic violence in an incident involving the applicant. *Arrest record, Miami Dade Police Department.* On May 6, 2005 the applicant was issued a protection order. *See Temporary Injunction for Protection Against Domestic Violence without Minor Child(ren), Circuit Court of the Eleventh Judicial Circuit, Miami-Dade County, Florida.* On August 1, 2006 the applicant divorced [REDACTED]. *See divorce decree.* On October 24, 2006 the applicant appeared before Citizenship and Immigration Service (CIS) for an interview regarding her application for permanent residence. *See District Director's Notice of Certification*, dated November 16, 2006. During her interview, the applicant informed the interviewing officer that she was a victim of domestic violence and, therefore, qualifies for adjustment of status pursuant to the Violence Against Women Act (VAWA). *Id.*

Pub. L. 109-162 enacted on January 5, 2006, provides in pertinent part:

The provisions of this Act [this note] 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, except that such spouse or child who has been battered or subjected to extreme cruelty may adjust to permanent resident status under this Act [this note] without demonstrating that he or she is residing with the Cuban spouse or parent in the United States. In acting on applications under this section [this note] with respect to spouses or children who have been battered or subjected to extreme cruelty, the Attorney General shall apply the provisions of section 204(a)(1)(J) [8 U.S.C. § 1154(a)(1)(J)]. An alien who was the spouse of any Cuban alien described in this section [this note] and has resided with such spouse shall continue to be treated as such a spouse for 2 years after the date on which the Cuban alien dies (or, if later, 2 years after the date of enactment of Violence Against Women and Department of Justice Reauthorization Act of 2005 [Jan. 5, 2006]), or for 2 years after the date of termination of the marriage (or, if later 2 years after the date of enactment of Violence Against Women and Department of Justice Reauthorization Act of 2005 [Jan. 5, 2006]) if there is demonstrated a connection between the termination of the marriage and the battering or extreme cruelty by the Cuban alien.

The applicant's former spouse is a native and citizen of Cuba who was inspected and paroled into the United States on November 8, 2003. *See Authorization for Parole of an Alien into the United States*. He has remained in the United States since that time. *Form G-325A, Biographic Information sheet*. Although the District Director based her decision in part on the failure of the applicant's spouse to adjust status under section 1 of the CAA, there is nothing in the plain language of the CAA that requires that [REDACTED] also have been admitted as a lawful permanent resident pursuant to section 1 under the CAA for the applicant to be able to adjust under section 1 of the CAA. 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 meets all the criteria of the CAA. As the record establishes that [REDACTED] is a Cuban citizen who was inspected and paroled into the United States on November 8, 2003 and who has since remained in the United States, the applicant has demonstrated that her former spouse meets the criteria of the CAA.

The provisions of Pub. L. 109-162 also apply to the applicant, as it has been less than two years since she divorced [REDACTED] on August 1, 2006 and the record demonstrates a connection between the termination of the marriage and the battering or extreme cruelty by [REDACTED]. Therefore the District Director's finding that the applicant is ineligible to adjust her status to lawful permanent resident under section 1 of the CAA because she divorced the applicant is in error. The AAO notes that the District Director referenced the findings of *Matter of [REDACTED]*, 13 I. & N. Dec. 740 (BIA 1971), in which the Board of Immigration Appeals found that adjustment under the CAA was not available to the spouse of a principal alien who was denied CAA adjustment. In the present case, [REDACTED] has not been denied adjustment under the CAA. Accordingly, the findings of [REDACTED] are not relevant to this proceeding.

The AAO notes that the District Director did not make any findings concerning whether the applicant is, otherwise, eligible for adjustment under the provisions of the CAA. Nor did the District Director address whether the applicant merits a favorable exercise of discretion. The AAO has reviewed the record of proceedings, however. On the basis of this review, the AAO concludes that the applicant is otherwise eligible

for adjustment, and also merits a favorable exercise of discretion. The application in the present case, therefore, will be approved

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. She has met that burden. The decision of the District Director to deny the application will be withdrawn and the application will be approved.

ORDER: The District Director's decision is withdrawn. The application is approved.