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



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: MIAMI, FLORIDA

Date: SEP 10 2008

IN RE:

[Redacted]

APPLICATION:

Application for Adjustment of Status to that of Person Admitted for Permanent Residence under Section 1 of Pub. L. 89-732 (November 2, 1966), as amended, the Cuban Adjustment Act.

ON BEHALF OF APPLICANT:

[Redacted]

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 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 The decision of the District Director will be withdrawn and the application will be approved.

The applicant is a native and citizen of Venezuela 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 his spouse's application to adjust her status to lawful permanent resident was denied. *See District Director's certification*, dated February 19, 2008. The AAO has withdrawn the District Director's decision and has approved the application of the applicant's spouse to adjust her status to lawful permanent resident under the CAA.

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). According to the Form I-485, Application to Register Permanent Residence or Adjust Status, the applicant is residing at the same address as his spouse. *Form I-485*.

The provisions of section 1 of the CAA are applicable to the spouse or child of an alien described in the CAA. As the applicant's spouse is eligible to adjust her status to lawful permanent resident under the CAA, the applicant is also eligible to adjust his status to lawful permanent resident under the CAA.

An applicant must demonstrate by a preponderance of the evidence that he 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 met his burden of proof. As there is nothing in the record to show that the applicant is inadmissible and the AAO finds that the applicant warrants a favorable exercise of discretion, the application for adjustment of status will be approved.

**ORDER:** The District Director's decision is withdrawn. The application to adjust status to lawful permanent resident under the Cuban Adjustment Act is approved.