

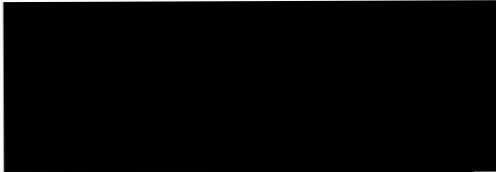


U.S. Citizenship
and Immigration
Services

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FILE:



Office: ORLANDO, FL

Date: **SEP 10 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:

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Field Office Director, Orlando, 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 Field Office Director will be affirmed.

The applicant is a native and citizen of Brazil 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 Field Office Director determined that the applicant was not eligible for adjustment of status because he had failed to demonstrate that his marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States. The District Director, therefore, denied the application and certified the decision to the AAO. *Decision of the Field Office Director*, dated May 19, 2008

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the Field Office Director's findings. No additional brief or evidence is found in the record.

The Field Office Director found that the applicant's marriage to his spouse was fraudulent based on the conflicting testimony provided by the applicant and his spouse during the adjustment of status interview. *Decision of the Field Office Director*, dated May 19, 2008.

The AAO observes that the record contains a statement signed by the applicant and his spouse; letters from a family member and friends; an unsigned tax return for 2007; earnings statements; and a police clearance letter from the Orange County Sheriff's Office.

Having reviewed the record, the AAO concurs with the District Director's decision. The applicant and his spouse provided different answers to questions regarding their living situation, most significantly the number of rooms in the house; the time of day that showering occurred; and the time of day the applicant's spouse returned home from work. The applicant and his spouse also provided different answers as to the cell phone company they each used; details regarding a trip the applicant took in October 2007, and the banks with which the applicant's spouse has accounts. The AAO finds that the inconsistencies in the testimony of the applicant and her spouse are not easily resolved. Moreover, there is nothing in the record to explain these inconsistencies. On certification, the applicant has failed to submit any evidence.

The AAO finds that the applicant has not met his burden of proof in showing that his marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States. A marriage entered into for the primary purpose of circumventing U.S. immigration laws is not recognized for the purpose of gaining immigration benefits. *See Matter of Laureano*, 19 I. & N. Dec. 1 (BIA 1983).

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 not met his burden of proof. As such, the Field Office Director's decision is affirmed.

ORDER: The Field Office Director's decision is affirmed.