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U.S. Citizenship
and Immigration
Services

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FILE:

Office: ORLANDO, FLORIDA

Date:

MAR 10 2009

IN RE:

Applicant:

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

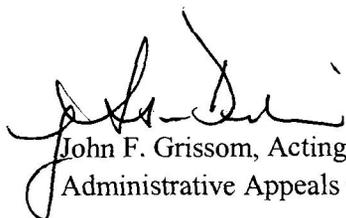
ON BEHALF OF APPLICANT:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant is a native of Colombia and citizen of Venezuela who filed this application for adjustment of status to that of a lawful permanent resident (Form I-485) under section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966, as the spouse of a Cuban citizen who is also described in section 1 of the CAA. Section 1 of the CAA provides, in part:

[N]otwithstanding the provisions of section 245(c) of the [Immigration and Nationality Act] the 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 [Secretary of Homeland Security], 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 application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence as of a date thirty months prior to the filing of such an application or the date of his last arrival into the United States, whichever is later. *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.* Pub. L. 89-732 (November 2, 1966) as amended. [Emphasis added]

The record provides the following facts and procedural history: The applicant last admitted to the United States on July 7, 2006 as a B-1 visitor. On April 27, 2007 in Kissimmee, Florida, the applicant married [REDACTED], a native and citizen of Cuba, who on June 12, 1980 became a lawful permanent resident pursuant to section 1 of the CAA. The applicant's spouse filed an I-130 Petition for Alien Relative on the applicant's behalf on July 27, 2007. The applicant filed a Form I-485 application to adjust status on the same day. On May 5, 2008, the applicant and her spouse appeared for an interview regarding the I-130 Petition and I-485 application. During an interview with an officer from U.S. Citizenship and Immigration Services (USCIS), the applicant's spouse withdrew the I-130 Petition, stating: "I am not in a real marriage. I wish to withdraw my petition for my wife, [the applicant]. There was someone else that helped arrange our meeting. His name is [REDACTED]. . . I am so sorry for doing this and regret this happened. See attached sheet for hand written withdrawal." In a hand-written statement, the applicant's spouse wrote that the applicant paid him \$5,000 in cash in \$100.00 and \$20.00 bills. The applicant's spouse stated further that his "real address" was [REDACTED] in Deltona, Florida.¹

The withdrawal of the I-130 Petition and the statements by the applicant's spouse caused the director to deny the applicant's Form I-485. The director certified her decision to the AAO for review on September 29, 2008. The director informed the applicant that she had 30 days to provide a brief or other written statement for consideration by the AAO. On October 24, 2008, the applicant submitted a response in which she stated that her spouse said what he did out of spite and

¹ On the I-130 Petition, the applicant and her spouse indicated that they both lived at [REDACTED] in Kissimmee, Florida.

that they were in love when they married. The applicant claimed that her spouse told her that he was going to lie at the interview if she did not give him all of the money that she was earning. The applicant stated further: "By the moment of our appointment we were not living at that address we provided because he didn't have money to pay the bills and I was going to separate from him because he was being unfaithful."

The language of the CAA restricts its benefits to aliens who are natives or citizens of Cuba and to their spouses and children who are residing with them in the United States. From the information that the applicant and her spouse have each provided to USCIS, there is reasonable and probative evidence to conclude that they were not residing together at the time of their May 5, 2008 interview and had never resided together since their marriage on April 27, 2007. The applicant's spouse wrote in a May 5, 2008 letter that his "real address" was in Deltona, Florida, despite the applicant's claim in her own May 5, 2008 sworn statement that she and her spouse were currently and had been living together in Kissimmee, Florida. The applicant also stated in her October 2008 letter that "[b]y the moment of our appointment we were not living at the address we provided"

As there is insufficient evidence to establish that the applicant and her spouse were residing together at the time of their interview or at any time since their marriage in April 2007, the applicant is ineligible to adjust her status to that of a lawful permanent resident as a derivative of her spouse under section 1 of the CAA.

Beyond the director's decision, the AAO finds an alternate ground for denying the application. The application may not be approved pursuant to section 204(c) of the Act, which states, in pertinent part:

[N]o petition shall be approved if –

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws, or
- (2) the [Secretary of Homeland Security] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The corresponding regulation at 8 C.F.R. § 204.2(a)(ii), states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

After a full, independent review of the relevant evidence in the record, the AAO concludes that the petitioner's marriage to her spouse was entered into for the purpose of evading the immigration

laws and the AAO is consequently barred from approving her application pursuant to section 204(c) of the Act. The petitioner's unequivocal statements to USCIS in which he admitted that it was not a "real marriage" and that he was paid \$5,000, is probative evidence that the applicant entered into a fraudulent marriage. Additionally, the record is devoid of any documentary evidence of the bona fides of the former couple's marriage. Evidence that a marriage was not entered into for the primary purpose of evading the immigration laws may include, but is not limited to, proof that the applicant has been listed as the petitioner's spouse on insurance policies, property leases, income tax forms, or bank accounts, and testimony or other evidence regarding courtship, wedding ceremony, shared residence, and experiences together. *Matter of Phillis*, 15 I&N Dec. 385, 386-87 (BIA 1975). The applicant has not submitted any of the type of evidence listed, and the lack of such evidence coupled with the statements of the applicant's spouse supports a determination that the applicant married her spouse for the purpose of evading the immigration laws. Consequently, section 204(c) of the Act bars the approval of the instant application.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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. The applicant has not met her burden and the director's decision will be affirmed.

ORDER: The director's decision is affirmed. The application is denied.