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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

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File: [REDACTED] Office: HIALEAH, FLORIDA  
MSC 09 044 23588

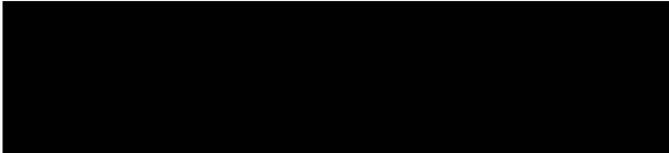
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**FEB 04 2010**

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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Hialeah, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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 applicant is seeking classification as the spouse of a Cuban citizen who became a lawful permanent resident pursuant to section 1 of the CAA. The director denied the application on May 15, 2009, and the applicant filed an appeal from that denial.

The regulation at 8 C.F.R. § 245.2(a)(5)(iii) states, in pertinent part:

*Under the Act of November 2, 1966.* [N]o appeal lies from the denial of an application by the director, but the applicant, if not an arriving alien, retains the right to renew his or her application in proceedings under 8 C.F.R. part 240.

The record reflects that the applicant is not an arriving alien, as he entered the United States on May 14, 2003 as a B-2 visitor for pleasure. The record also reflects that on June 25, 2009, a Notice to Appear (NTA) was served upon the applicant, placing him into removal proceedings before the immigration court; the immigration court, therefore, has jurisdiction over the applicant's adjustment of status application. 8 C.F.R. §§ 1003.14(a) and 1245.2(a)(1). As the AAO does not have appellate jurisdiction over an appeal from the denial of an application for adjustment of status pursuant to section 1 of the CAA, and as jurisdiction over the applicant's adjustment application is now before the immigration court, the appeal must be rejected.

**ORDER:** The appeal is rejected.