

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

A2

FILE: [REDACTED] Office: ORLANDO, FLORIDA Date: **MAR 12 2010**
MSC 06 112 12401

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:

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).

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Ecuador 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 has requested lawful permanent residence classification pursuant to section 1 of the CAA. 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 her discretion and under such regulations as she 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.

A review of the record reveals the following facts and procedural history: On the Form I-485, Application to Register Permanent Residence or Adjust Status, the applicant stated that she last entered the United States in B-2 status on June 13, 1991. On December 11, 2005, the applicant married her current spouse, a native or citizen of Cuba. United States Citizenship and Immigration Services' (USCIS) records indicate that the applicant's spouse filed a Form I-485 pursuant to section 1 of the CAA on January 20, 2006. USCIS records further show that the applicant's spouse's Form I-485 was denied on July 22, 2009 and that the AAO affirmed the field office director's decision on certification. The applicant filed the instant Form I-485 with USCIS on January 16, 2006.

In the field office director's July 22, 2009 decision, the field office director determined that the applicant was not eligible for adjustment of status pursuant to section 1 of the CAA because her spouse's Form I-485 had been denied as he was not admissible to the United States; thus, her spouse had not acquired lawful permanent residence status pursuant to section 1 of the CAA and the applicant was ineligible for the benefits of section 1 of the CAA. The field office director certified her decision to the AAO for review. The field office director informed the applicant that she had 30 days to supplement the record with any evidence that she wished the AAO to consider. The applicant did not submit further information on certification. The record is considered complete.

Adjustment of status to that of permanent resident pursuant to the provisions of the CAA is not available to the spouse of an alien described in section 1 of the Act, where the alien himself has been denied adjustment of status under the Act. *Matter of Quijada-Coto*, 13 I&N Dec. 740 (BIA 1971). Accordingly, the instant application must be denied.



Page 3

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. Accordingly, the field office director's decision is affirmed.

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