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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

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: ORLANDO, FLORIDA Date: MAR 1 2 2010
MSC 08 178 11661

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 field office director's decision will be affirmed. The application will be denied.

The applicant is a native and citizen of Colombia 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 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. [Emphasis added.]

A review of the record reveals the following facts and procedural history: On October 3, 2007, the applicant entered the United States in B-2 status. On January 11, 2008, the applicant married her Cuban-born spouse. United States Citizenship and Immigration Services' (USCIS) records indicate that the applicant's spouse acquired his lawful permanent resident status pursuant to section 1 of the CAA. On March 24, 2008, the applicant filed the instant Form I-485 with USCIS.

In an August 10, 2009 decision, the field office director determined that the applicant was not eligible for adjustment of status because she filed her Form I-485 less than one year after she had acquired dependent status of a native or citizen of Cuba who had adjusted status pursuant to section 1 of the CAA. The field office director also determined that the applicant had not established one year of physical presence in the United States prior to applying for benefits under section 1 of the CAA. The field office director denied the application and certified her decision to the AAO for review. The director informed the applicant that she had 30 days to supplement the record with any evidence that she wished the AAO to consider.

On certification, the applicant submits a personal statement in which she declares that she and her spouse have been together for almost six years, that she traveled from Colombia to be with him every year, and that they finally married in January 2008. The applicant also submits her husband's statement wherein her husband declares that the applicant applied with the best of intentions and that he needs her to be with him. The applicant submits a photocopy of passport pages showing that she entered the United States as a B-2 visitor on October 3, 2007, March 29, 2006, March 14, 2003, and July 17, 2001. The record does not include a copy of the applicant's complete passport. The applicant has not submitted further evidence that she had one year of physical presence in the United States when she filed the Form I-485.

An applicant is ineligible for the benefits of section 1 of the CAA unless he or she has been physically present in the United States for one year. 8 C.F.R. § 245.2(a)(2)(ii). The applicant filed the instant I-485 on March 24, 2008, which was five months and 21 days after her arrival in the United States. The record does not include any documentary evidence substantiating that the applicant resided in the United States for one year prior to filing the Form I-485. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Although a spouse of a Cuban national described in section 1 of the CAA may also seek to adjust status under section 1 of the CAA this section requires that the Cuban national and the spouse be not only living together but that the spouse also have one year of physical presence in the United States when she files the Form I-485. Again, the applicant, although now living with the Cuban national, has not established that she had resided in the United States for one year when she filed the Form I-485. Accordingly, the application must be denied. 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 field office director's decision is affirmed. The application is denied.