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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



A₂

FILE:



Office: ORLANDO FIELD OFFICE

Date:

MAR 08 2011

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Orlando, Florida, who 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 Mexico 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 been granted 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.

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 beneficiary 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).

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 he last entered the United States on February 15, 1998 without inspection. On June 19, 2008, the applicant married N-Z,¹ a native and citizen of Cuba. USCIS records show that the applicant's spouse's immigration status was adjusted to that of a lawful permanent resident pursuant to section 1 of the CAA. The applicant filed the instant Form I-485 with USCIS on November 12, 2009. On October 13, 2010, the applicant and his spouse attended a USCIS interview. The applicant and his spouse were questioned separately regarding their domestic life and shared experiences and then were provided an opportunity to explain inconsistencies in their testimony.

On November 17, 2010, the field office director denied the Form I-485 application listing more than 40 discrepancies between the testimony of the applicant and the testimony of his spouse at the October 13, 2010 interview. The director noted that the applicant and his spouse had been given the opportunity to address each of the inconsistencies noted and the decision reflected the applicant and his spouse's responses. The field office director also listed the documentation submitted in support of the bona fides of the marriage. Upon review, the director determined on

¹ Name withheld to protect individual's identity.

the basis of the discrepancies and the lack of material evidence submitted, the applicant had failed to establish that his marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States. The field office director certified her decision to the AAO for review on November 17, 2010.

On certification, counsel for the applicant submits a statement signed by the applicant and his spouse, photographs, and the driver's license of the applicant's friend.

The applicant does not submit a detailed statement regarding his courtship, wedding ceremony, shared residence, and experiences together with N-Z-. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). The record does not include the requisite detailed evidence establishing the applicant's intent at the time of marriage. Moreover, the record does not include evidence demonstrating that the couple established a life together.

The record includes numerous unresolved inconsistencies referenced by the field office director that have not been adequately explained in the applicant and his wife's statement on certification, such as: the applicant's spouse stated that the applicant proposed to her at her place of residence, while the applicant first indicated that he did not remember anything about the day he proposed but later indicated that it was at their work place, [REDACTED] the applicant was unable to explain why he did not know that his spouse had a tattoo on her forearm, even though he was repeatedly asked how many tattoos his spouse had; neither the applicant nor his wife could explain why each of them named someone else on their driver's licenses as their emergency contact. Overall, the applicant and his spouse do not provide consistent and clear testimony demonstrating that they established a life together. Upon review of the inconsistencies in the record regarding the couple's domestic life and shared experiences and considering the applicant and his spouse's statement offered on certification, we find substantial and probative evidence that the applicant entered into the marriage for the purpose of evading U.S. immigration laws.

We have also reviewed the limited documentary evidence submitted to demonstrate that the marriage was bona fide. The record included a Chase checking account statement indicating the account was opened February 8, 2010 and listing the applicant as a primary owner and N-Z- as the secondary owner, as well as three Chase banking statements submitted including time periods from February to April 2010 and for August 2010. The record further included a Bank of America statement for January 22, 2010 to February 18, 2010 addressed to both the applicant and N-Z- that shows no account activity. The bank statements without the underlying transactional information is insufficient to establish that the couple used the joint account for the necessities of a life together and similarly, do not assist in establishing the applicant's intent in entering into the marriage. A credit card offer sent to the applicant at [REDACTED] also lacks probative value in establishing the couple had a bona fide marriage. Receiving mail at an address is insufficient to establish intent or that the marriage was bona fide.

The record does not include the applicant's credible statement describing the courtship, marriage, and subsequent interactions of the couple and the record lacks probative documentary evidence

establishing the good faith intent of the couple when entering into the marriage. Moreover, in light of the numerous inconsistencies and lack of credible explanations regarding a substantial number of the inconsistencies as described above, the record includes substantial and probative evidence that the marriage was entered into to circumvent immigration laws.

Even if the applicant could have overcome the director's findings, we note, beyond the director's decision, that the applicant could not adjust his status under the CAA. Although the spouse of a qualifying Cuban applicant may also seek adjustment under section 1 of the CAA regardless of his nationality or place of birth, he must nevertheless meet all the other eligibility criteria, and must reside with the principal applicant. *See Matter of Bellido*, 12 I. & N. Dec. 369 (R.C. 1967). One eligibility criteria under the CAA is the requirement to have been inspected, admitted or paroled into the United States after January 1, 1959. The record reflects that the applicant entered the United States without being inspected, admitted or paroled, as he claimed that he entered on February 15, 1998 without inspection. Accordingly, he cannot meet at least one eligibility criteria under the CAA. For this additional reason, the application may not be approved.

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 he is eligible for adjustment of status. The applicant has not met his burden. Accordingly, the AAO affirms the decision of the director to deny the applicant's application to adjust status pursuant to section 1 of the CAA.

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