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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

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DATE: SEP 20 2011 Office: WEST PALM BEACH, FL FILE:

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:

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 Acting District Director 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 citizen and native of Colombia who was admitted to the United States on December 13, 1997 with temporary authorization to remain in the United States until June 12, 1998. On June 20, 2005, he submitted an application to adjust status to that of lawful permanent resident pursuant to section 1 of Pub. L. 89-732 (November 2, 1966) as amended, the Cuban Adjustment Act (1966 Act). The applicant, a minor, is seeking classification as the stepchild 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.

The applicant's biological father married [redacted][1] on [redacted] 2005 in the State of Florida. United States Citizenship and Immigration Services (USCIS) records show that [redacted] adjusted status to that of a lawful permanent resident pursuant to section 1 of the CAA. USCIS interviewed the applicant's biological father and [redacted] on [redacted] 2006. The director entered her decision on July 20, 2006, determining that the applicant's father had entered into the marriage for the primary purpose of circumventing the immigration laws of the United States. The director certified the applicant's decision, as well as his father's decision to the AAO for review. The director informed the applicant that he had 30 days to supplement the record with any evidence that he wished the AAO to consider. The applicant did not submit further information on certification. The record is considered complete.

In the July 20, 2006 decision the director notified the applicant that his father had provided different responses to those provided by [redacted] at the February 13, 2006 interview. The director concluded that the discrepant responses along with the lack of other material evidence strongly suggested that the applicant's father had entered into the marriage with [redacted] primarily to circumvent the immigration laws of the United States. Where the bona fides of a marriage are challenged, documentary or testimonial evidence showing that the marriage was not entered into for the primary purpose of evading the immigration laws must be presented. *See Matter of Phillis,* 15 I&N Dec. 385 (BIA 1975). Neither the applicant in this matter nor his father has presented documentary or testimonial evidence clarifying the discrepancies noted by the director. Thus, the record does not establish that the applicant's father entered into the marriage with [redacted]

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[1] Name withheld to protect the individual's identity.

to establish a life together. *See Bark v. INS,* 511 F.2d 1200 (9th Cir.1975). The record does not include any documentary evidence that the applicant's father and [redacted] shared any joint financial assets and liabilities or other marital responsibilities. The applicant has not presented documentary evidence of testimony showing that his father did not enter into the marriage for the primary reason of circumventing the immigration laws of the United States. Thus, the applicant has not established the authenticity of the marriage and that he is a stepchild of the Cuban citizen.

Moreover, the record establishes that the applicant is not a native or citizen of Cuba and the record does not include any evidence that the applicant is residing or had resided with his alleged Cuban citizen stepmother. Although the provisions of section 1 of the CAA are applicable to the spouse or child of an alien described in the CAA, it has been held in *Matter of Bellido*, 12 I&N Dec. 369 (Reg. Comm. 1967), that an applicant who is not a native or citizen of Cuba and is not residing with the Cuban citizen in the United States, is ineligible for adjustment of status pursuant to section 1 of the CAA. The applicant has not established his eligibility for adjustment of status pursuant to section 1 of the CAA.

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 director's decision is affirmed.

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