

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
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

A2



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 April 24, 1998 with temporary authorization to remain in the United States until October 23, 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 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.

The applicant married [REDACTED] 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. The couple was interviewed regarding the instant Form I-485 by USCIS on February 13, 2006. The director entered her decision on July 20, 2006, determining that the applicant had entered into the marriage for the primary purpose of circumventing the immigration laws of the United States. The director certified her 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 he 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 had entered into the marriage primarily to circumvent the immigration laws of the United States. Where the bona fides of a marriage are challenged, the applicant must present documentary or testimonial evidence to show that the marriage was not entered into for the primary purpose of evading the immigration laws. *See Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975). The applicant in this matter has not presented documentary or testimonial evidence clarifying the discrepancies noted by the director; thus, the record does not establish that the applicant entered into his marriage to establish a life together with his spouse. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). The record does not include any documentary evidence that the

¹ Name withheld to protect the individual's identity.

██████████
Page 3

couple shares any joint financial assets and liabilities or other marital responsibilities. Accordingly, as the applicant has not presented documentary or testimonial evidence to demonstrate that he did not enter into the marriage for the primary reason of circumventing the immigration laws of the United States, the instant 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 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.