



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

Public Copy

FILE: [REDACTED]

Office: Miami

Date: AUG 10 2000

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)

IN BEHALF OF APPLICANT:

[REDACTED]

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be withdrawn, and the application will be approved.

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 of November 2, 1966. This Act 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, 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.

The district director determined that the applicant was not eligible for adjustment of status as a spouse of a native or citizen of Cuba pursuant to section 1 of the Act of November 2, 1966, because she had not established that her marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States. The district director, therefore, denied the application.

In response to the notice of certification, counsel asserts that the applicant has submitted substantial evidence in the form of family photographs, documents, and responses to questions, which prove the marriage relationship.

The record reflects that on December 29, 1997 at Miami Beach, Florida, the applicant married a native and citizen of Cuba whose immigration status was adjusted to that of a lawful permanent resident of the United States pursuant to section 1 of the Cuban Adjustment Act.

At an interview regarding her application for permanent residence on October 26, 1999, the applicant and her spouse were each placed under oath and questioned separately regarding their domestic life and shared experiences. Citing Matter of Laureano, 19 I&N Dec. 2951 (BIA 1983), and Matter of Phillis, 15 I&N Dec. 385 (BIA 1975), the district director determined that the discrepancies encountered

at the interview, a number of which relate to the inception of the marriage, and the lack of material evidence presented, strongly suggest that the applicant and her spouse have entered into a marriage for the primary purpose of circumventing the immigration laws of the United States.

In response to the notice of certification, counsel submits responses by the applicant and her spouse explaining the discrepancies in their answers to questions posed at their interview. Also submitted are: statements of joint bank accounts; joint automobile insurance policy; joint health spa contract and membership cards; postcard and mail sent jointly to the applicant and her spouse; utility billing statements; telephone billing statements; rent receipts; 1997 joint income tax return; and numerous family photographs.

The applicant's explanation regarding the basis of the contradictory responses given at the interview, and the evidence furnished to establish that the applicant's marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States, appear credible.

As the only ground of ineligibility present in this case has now been overcome, it is, therefore, concluded the applicant has established she is in fact eligible for adjustment of status to permanent resident pursuant to section 1 of the Act of November 2, 1966, and warrants a favorable exercise of discretion. Accordingly, the district director's decision will be withdrawn, and the application will be approved.

ORDER: The director's decision is withdrawn. The application is approved.