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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

FILE: [redacted] Office: Miami Date: JUN 21 2002

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]

PUBLIC COPY

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

Helen E. Crawford for

Robert P. Wiemann, 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 Associate Commissioner affirmed the decision of the district director to deny the application. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted and the case will be remanded to the district director for further consideration and action.

The applicant is a native and citizen of Venezuela 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 denied the application after determining 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.

Upon review of the record of proceeding, the Associate Commissioner noted that the district director determined that based on the discrepancies encountered at the Service interview, a number of which relate to the inception of the marriage, and the lack of material evidence presented, the applicant had failed to establish that her marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States. The Associate Commissioner further noted that although the applicant was offered an opportunity, on notice of certification, to submit evidence in opposition to the district director's findings, no additional evidence had been entered into the record of proceedings, nor did the applicant refute or explain the basis of the contradictory testimony given at their interview. He,

therefore, concurred with the findings of the district director and affirmed his decision to deny the application on July 5, 2001.

On motion, counsel asserts that he timely submitted a brief on June 26, 2000, including affidavits from the applicant and her husband, as well as additional documentation evidencing the bona fide marriage. He submits a copy of the brief packet and requests that the Service take into consideration the previously-submitted and timely brief, as well as the new documents that evidence a bona fide marriage or, alternatively, that the couple be granted an additional interview in light of the new evidence.

Based on the evidence furnished on motion, the case will, therefore, be remanded so that the district director may review the record of proceeding and/or grant the applicant and her spouse an opportunity to appear at a Service office for another interview. The district director shall enter a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner, Examinations, for review.

ORDER: The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.