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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FILE: [redacted] Office: Miami Date: FEB 28 2003

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: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

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

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

The applicant has provided no statement or additional evidence on notice of certification.

The record reflects that on July 3, 2001, at Coral Gables, Florida, the applicant married [redacted] a native and citizen of Cuba and a lawful permanent resident of the United States. Based on that marriage, on October 5, 2001, the applicant filed for adjustment of his status to permanent residence under section 1 of the Cuban Adjustment Act.

At an interview regarding his application for permanent residence on August 28, 2002, the applicant and his spouse were each placed under oath and questioned separately regarding their domestic life and shared experiences. Citing Matter of Laureano, 19 I&N Dec. 1 (BIA 1983), and Matter of Phillis, 15 I&N Dec. 385 (BIA 1975), the acting district director determined that the discrepancies encountered at the interview, and the lack of material evidence

presented, strongly suggest that the applicant and his spouse have entered into a marriage for the primary purpose of circumventing the immigration laws of the United States. The acting district director, therefore, denied the application.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the acting district director's findings. No additional evidence has been entered into the record of proceedings. Nor did the applicant refute or explain the basis of the contradictory testimony given at their interview.

Additionally, although not addressed by the acting district director, the applicant's medical examination report (Form I-693) dated October 1, 2001, reflects that the applicant tested positive for HIV infection and that the results of the serological examination for HIV were confirmed by Western blot.

Pursuant to section 212(a)(1)(A)(i) of the Act, 8 U.S.C. 1192(a)(1)(A)(i), any alien who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with the etiologic agent for acquired immune deficiency syndrome, is inadmissible to the United States. HIV has been determined by the Public Health Service to be a communicable disease of public health significance. 42 C.F.R. 34.2(b)(4). Therefore, it appears the applicant may be inadmissible to the United States pursuant to section 212(a)(1)(A)(i) of the Act.

Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. Further, Matter of Marques, 16 I&N Dec. 314 (BIA 1977), held that when an alien seeks favorable exercise of the discretion of the Attorney General, it is incumbent upon him to supply the information that is within his knowledge, relevant, and material to a determination as to whether he merits adjustment. When an applicant fails to sustain the burden of establishing he is entitled to the privilege of adjustment of status, his application is properly denied.

The decision of the acting district director to deny the application will be affirmed.

ORDER: The acting district director's decision is affirmed.