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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

JUN 09 2003

FILE: [redacted] Office: Miami Date:

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)

ON 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 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 Bureau of Citizenship and Immigration Services (Bureau) 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.

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 Administrative Appeals Office for review. The case will be remanded to the acting district director for further action.

The applicant is a native and citizen of Mexico who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act (CAA) 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 stepchild of a native or citizen of Cuba, pursuant to section 1 of the CAA, because he and his stepfather are not residing together. The acting district director, therefore, denied the application.

In response to the notice of certification, the applicant's mother asserts that she is separated from her husband [redacted] because she and her son (the applicant) were exposed to psychological abuse, and that Mr. [redacted] is a very violent person. His mother further asserts that she fears for her life and the life of her young son because of Mr. [redacted] violence, excessive drinking, and his desire to always be armed. She submits documentation as evidence that she and her son were subjected to extreme cruelty.

The record reflects that on December 29, 2000, in Mexico, the applicant's mother married Mr. [redacted] a native and citizen of Cuba and a lawful permanent resident of the United States. Based on that marriage, on May 15, 2002, the applicant filed for adjustment of his status to permanent residence as the stepchild of a Cuban, pursuant to section 1 of the CAA.

On December 13, 2002, the applicant and his mother appeared for a scheduled Service interview regarding their application for permanent residence. Mr. [redacted] however, did not appear for the interview. The applicant's mother advised the Service officer that she and Mr. [redacted] had been separated for approximately one month.

Although the provisions of section 1 of the CAA are applicable to the spouse or child of an alien described in the Act, 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 spouse or parent in the United States, is ineligible for adjustment of status pursuant to section 1 of the CAA.

On October 28, 2000, the President approved enactment of the Violence Against Women Act (VAWA), 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1509(a) amends Public Law 89-732 (Section 1 of the Cuban Adjustment Act of November 2, 1966), allowing a spouse or child who has been battered or subjected to extreme cruelty to adjust to permanent resident status under this Act without demonstrating that he or she is residing with the Cuban spouse or parent in the United States.

The case will, therefore, be remanded so that the director may review the documentation furnished by the applicant, request additional information regarding extreme cruelty if required, and determine if the applicant, in fact, falls under section 1509(a) of the VAWA amendment. The acting district director shall enter a new decision which, if adverse to the petitioner, is to be certified to the AAO for review, and without fee.

ORDER: The acting district director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.