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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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

[REDACTED]

FILE: [REDACTED] Office: Miami

Date: March 10 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)

ON BEHALF OF APPLICANT:

[REDACTED]

PUBLIC COPY

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 (AAO) for review. The acting district director's decision will be affirmed.

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 (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 spouse of a native or citizen of Cuba, pursuant to section 1 of the Act of November 2, 1966, because his spouse's application for adjustment of status under the CAA was denied. The acting district director, therefore, denied the application.

In response to the notice of certification, counsel asserts that the applicant's spouse has met the requirements of the CAA because she had proven that she is a native of Cuba, she was inspected and admitted to the United States, she had proven that she was physically present in the United for one year, and that she has not abandoned her application.

The record reflects that on April 13, 1962, in Venezuela, the applicant married [REDACTED] a native of Cuba. Based on that marriage, on April 5, 2001, the applicant filed for adjustment of status pursuant to section 1 of the CAA.

8 C.F.R. § 245.2(a)(2)(ii) provides, in part:

An application for the benefits of section 1 of the Act of November 2, 1966 is not properly filed unless the applicant was inspected and admitted or paroled into the United States subsequent to January 1, 1959. An applicant is ineligible for the benefits of the Act of November 2, 1966 unless he or she has been physically present in the United States for one year.

The acting district director denied the application of Ms. [REDACTED] after noting that Ms. [REDACTED] had not established that she was maintaining a residence in the United States, and that she had been physically present in the United States for at least one year.

The Board, in *Matter of Quijada-Coto*, 13 I&N Dec. 740 (BIA 1971), held that adjustment of status to that of a permanent resident, pursuant to the provisions of the Act of November 2, 1966, is not available to the spouse or child of an alien described in section 1 of the Act, where the alien himself/herself had been denied adjustment of status under the Act.

The AAO reviewed the Service record of Ms. [REDACTED] and noted that she claimed on her application to have last arrived in the United States with a B-2 nonimmigrant visa on December 8, 2000, and that based on the evidence furnished with her application, it appears that Ms. [REDACTED] is claiming residence in the United States since her entry on December 8, 2000. On April 5, 2001, Ms. [REDACTED] filed her application for adjustment of status under the CAA. The AAO, therefore, concluded that Ms. [REDACTED] was not physically present in the United States for one year at the time she filed her adjustment application on April 5, 2001. Nor had Ms. [REDACTED] established that she is residing in the United States. The AAO, therefore, affirmed the acting district director's decision to deny Ms. [REDACTED] application.

Accordingly, the applicant is ineligible for adjustment of status to permanent residence, as the spouse of a native of Cuba, pursuant to section 1 of the Act of November 2, 1966. The decision of the acting district director to deny the application will be affirmed.

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