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U.S. Citizenship
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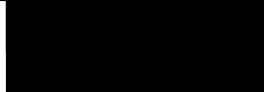
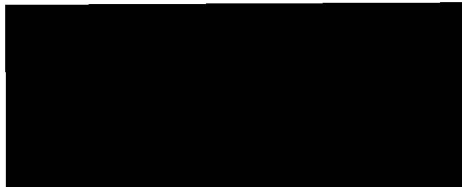
FILE:  Office: PHOENIX, ARIZONA Date: MAY 23 2006

IN RE: Applicant:

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Phoenix, Arizona, who certified his decision to the Administrative Appeals Office (AAO) for review. The Acting District Director's decision will be withdrawn, and the application approved.

The applicant is a native and citizen of Cuba 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. The CAA provides, in 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, (now the Secretary of Homeland Security, (Secretary)), 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 Acting District Director determined that the applicant entered the United States as the fiancé of a U.S. citizen in possession of a K-1 nonimmigrant visa pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K). The Acting District Director determined that the applicant is ineligible for adjustment of status pursuant to section 1 of the CAA, because he falls within the purview of section 245(d) of the Act, 8 U.S.C. § 1255(d). The Acting District Director, therefore, denied the application accordingly. *See Acting District Director's Decision* dated January 10, 2006.

Section 245 of the Act, states in pertinent part:

> (d) The Attorney General may not adjust, under subsection (a), the status of a nonimmigrant alien described in section 101(a)(15)(K) except to that of an alien lawfully admitted to the United States on a conditional basis under section 216 as a result of the marriage of the nonimmigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's nonimmigrant status under section 101(a)(15)(K).

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the Acting District Director's findings. In response to the notice of certification, counsel submits a brief and refers to former Commissioner's Meissner's April 26, 1999, News Release, in which it is stated that applications for adjustment of status under the CAA may be approved even if they do not meet ordinary requirements for adjustment of status under section 245 for the Act. In addition, counsel states that the applicant did not violate the provisions of section 245(d) of the Act. Counsel further states that the applicant's marriage was entered into in good faith but the relationship between the couple deteriorated, and keeping a bad marriage alive just for the purpose of obtaining an immigration benefit would have been fraud. The applicant divorced his spouse and applied for adjustment of status under section 1 of the CAA and not under section 245 of the Act. Furthermore, counsel states that the applicant is eligible for adjustment of status under section 1 of the CAA, since he is a native and citizen of Cuba, he was inspected and admitted into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year. Finally, counsel states the decision is incorrect and requests that it be withdrawn and the application approved.

Section 4 of the CAA (Public Law 89-732, November 2, 1966, as Amended) states:

> Except as otherwise specifically provided in the Act, the definition contained in section 101(a) and (b) of the Immigration and Nationality Act shall apply in the administration of this Act. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties functions or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Acct or any other law relating to immigration nationality, or naturalization.

Section 101(a)(15)(K) of the Act defines "fiancée" and "fiancé" as an alien who seeks to enter the United States solely to conclude a valid marriage with the petitioner within 90 days after admission.

It is clear from Service regulations and from the statute that an alien admitted into the United States under the provisions of section 214 of the Act is subject to removal proceedings if the marriage with the petitioner does not occur within three months after admission of said alien. Furthermore, the alien is ineligible for adjustment of status under section 245 or 216 of the Act.

Section 245(d) of the Act states specifically that: "The Attorney General may not adjust, under subsection (a)," clearly indicating that it only applies to applications for adjustment of status under section 245 of the Act. The applicant, in this case, is applying for adjustment of his status to permanent residence under section 1 of the CAA of November 2, 1966, and not under section 245 or 216 of the Act.

To be eligible for adjustment of status under section 1 of the CAA, an alien must show only that he is a native or citizen of Cuba, he was inspected and admitted or paroled into the United States, he has been physically present in the United States for at least one year, and he is admissible to the United States for permanent residence. *See Matter of Masson*, 12 I&N Dec. 699 (BIA 1968).

The applicant, in this case, was born in Cuba. He is, therefore, a native of Cuba. He was inspected and admitted into the United States subsequent to January 1, 1959, and he has been physically present in the United States for at least one year. He is, therefore, not precluded from adjustment of status under section 1 of the CAA of November 2, 1966. The Acting District Director did not raise any other basis for denial, nor are there known grounds of inadmissibility. Accordingly, the Acting District Director's decision will be withdrawn, and the application will be approved.

ORDER: The Acting District Director's decision is withdrawn. The application is approved.