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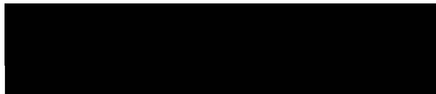
U.S. Citizenship
and Immigration
Services

A2

FILE: Office: MIAMI, FL Date: FEB 01 2008

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:

SELF-REPRESENTED

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 District Director, Miami, Florida, who certified her decision to the Administrative Appeals Office (AAO) on appeal. The District Director's decision will be affirmed.

The applicant is a native and citizen of Colombia 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 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, (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 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 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 CAA of November 2, 1966, because her divorce from a previous marriage was invalid and therefore her marriage to the native or citizen of Cuba was also invalid.[1] *District Director's decision*, dated September 13, 2007.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. The applicant did not submit additional evidence.

The record reflects that the applicant was married to [redacted] on November 23, 1985 in Colombia. *See marriage certificate*. On December 3, 1999 the applicant was admitted to the United States on a B-2 visa valid until June 2, 2000. *Form I-94*. The applicant overstayed her visa and remained in the United States. *Form G-325A, Biographic Information Sheet*. On August 27, 2004 the applicant and her spouse divorced. *See divorce decree*. A Colombian Magistrate in Armenia, Quindio, Colombia issued the divorce decree. *Id*. The applicant stated that at the time of the divorce, both she and her spouse lived in Florida. *Statement from the applicant*, dated March 23, 2006. On September 17, 2004 the applicant married [redacted]s, a native or citizen of Cuba who had adjusted his status to lawful permanent resident under the CAA on September 4, 2003. *See marriage certificate and Lawful Permanent Resident card.*

In support of her determination that the applicant's divorce was invalid, the District Director cited immigration cases which hold that the validity of a divorce entered into while neither party to it is domiciled in the place where it was granted should be judged by the law of the jurisdiction where the parties to the divorce were domiciled at the time of the divorce. *See Matter of Weaver*, 16 I. & N. Dec. 730 (BIA 1979); *See Also Matter of Luna*, 18 I. & N. Dec. 385 (BIA 1983). Most notably, the District Director cited a Florida case, *In re Schorr's Estate*, 409 So.2d 487 (Fla. App., 1981), which held in pertinent part:

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[1] The AAO notes the District Director erred in stating that the applicant had been issued a Dominican divorce decree. The only divorce decree in the record is from Colombia.

> States are not required to give full faith and credit to divorces rendered in foreign nations. Whether a state will give force and effect to a foreign divorce decree is solely a question of comity. *Parker v. Parker*, 155 Fla. 635, 21 So. 2d 141 (1945), *cert. denied*, 326 U.S. 718, 66 S.Ct. 23, 90 L.Ed. 425 (1945); *Schwartz v. Schwartz*, 143 So.2d 901 (Fla. 2d DCA 1962). To actuate the doctrine of judicial comity a foreign judgment must partake of the elements which would support it if procured in this country. For example, the grounds relied upon must be sufficient under Florida law and the petitioning party must satisfy the jurisdictional requirements relating to domicile. *Pawley v. Pawley*, 46 So.2d 464 (Fla), *cert. denied*, 340 U.S. 866, 71 S.Ct. 90, 95 L.Ed. 632 (1950); *Kittel v. Kittel*, 194 So.2d 640 (Fla. 3d DCA 1967), *cert. discharged*, 210 So. 2d 1 (Fla. 1967); Annot., 13 A.L.R. 3d 1419 (1967). It has long been held that Florida courts will not recognize a foreign nation's divorce decree unless at least one of the spouses was a good faith domiciliary of the foreign nation at the time the decree was rendered. 26 Fla.Jur.2d Family Law § 798 (1981); *Schwartz v. Schwartz*, supra; *Kittel v. Kittel*, supra; accord, *Williams v. North Carolina*, 325 U.S. 226, 65 S.Ct. 1092, 89 L.Ed. 1577 (1945).

The AAO further notes that *Matter of Hosseinian*, 19 I& N Dec. 453 (BIA 1987) states in relevant part:

> A foreign divorce is not recognized as valid under California law if both parties to the marriage were domiciled in California at the time the divorce proceeding was commenced. *Matter of Kurtin*, 12 I&N Dec. 284 (BIA 1967), overruled. Therefore, the validity of a marriage for immigration purposes is generally governed by the law of the place of celebration of the marriage. *Adams v. Howerton*, 673 F.2d 1036 (9th Cir.), cert. denied, 458 U.S. 1111 (1982); *Matter of Luna*, 18 I&N Dec. 385 (BIA 1983); *Matter of Bautista*, 16 I&N Dec. 602 (BIA 1978); *Matter of Arenas*, 15 I&N Dec. 174 (BIA 1975); *Matter of P-*, 4 I&N Dec. 610 (BIA, Acting A.G. 1952). Where one of the parties to a marriage has a prior divorce, we look to the law of the state where the subsequent marriage was celebrated to determine whether or not that state would recognize the validity of the divorce. *Matter of Ma*, 15 I&N Dec. 70 (BIA 1974).

Matter of Hosseinian further states that "[a]s the marriage between the petitioner and the beneficiary was celebrated in California, the issue before us is whether the petitioner's divorce in Hungary would be recognized as valid under California law." 19 I&N Dec. 453 (BIA 1987). Applying the Board's analysis in *Matter of Hosseinian* to the facts of this particular case, the issue is whether the applicant's divorce in Colombia would be recognized as valid under Florida law.

Under Florida law, recognition of divorce decrees rendered in foreign courts is a matter of comity involving an exercise of discretion. *See Pawley v. Pawley*, 46 So. 2d 464 (Fla. 1950); *Popper v. Popper*, 595 So. 2d 100 (Fla. 5th DCA), review denied, 602 So. 2d 942 (Fla. 1992). In order to be entitled to comity, the record must show the foreign judgment partook of the elements which would support it if it had been obtained in this state. This means that "the grounds relied upon for divorce must be sufficient under Florida law, the petitioning party must satisfy the jurisdictional requirements relating to residency or domicile, and basic due process and notice requirements must be met." *Popper*, 595 So. 2d at 103.

Florida Statute § 61.021 states in pertinent part:

> 61.021 Residence requirements.—To obtain a dissolution of marriage, one of the parties to the marriage must reside 6 months in the state before the filing of the petition.

In *Lopes v. Lopes*, even though the appellant's divorce from her previous spouse was apparently valid in the Dominican Republic, which has no residency requirements and which has, since 1971, recognized divorces for non-resident foreigners based on "mutual consent," Florida refused to recognize such a divorce. Case No. (Fla. 5th DCA 2003), http://www.5dca.org/Opinions/Opin2003/081803/5D02-793.op.pdf.

When applying the relevant law to the facts of this particular case, the AAO notes that the record does not establish that the applicant resided in Colombia for six months before the filing of the divorce petition. *Form G-325A, Biographic Information sheet*. Further, the applicant has stated that her first spouse was living in Florida at the time the divorce was official, and no evidence demonstrates that he was not living in Florida during the six months before the filing of the divorce petition.

It is the applicant's burden to show that she is eligible for the benefit sought. The AAO finds that the applicant has not met this burden, for she has not shown that she or her first spouse resided in Colombia for six months before the filing of this divorce petition. Thus, the applicant has not satisfied the residency requirement imposed by Florida divorce law. She has not shown that her divorce in Colombia is valid for U.S. immigration purposes.

The AAO concurs with the District Director's finding that the applicant's divorce is invalid and thus her subsequent marriage is also invalid. The applicant therefore does not qualify to adjust her status under the CAA.

The provisions of section 1 of the CAA are applicable to the spouse or child of an alien described in the CAA. As the applicant is not the spouse of an alien described in the CAA, the applicant is not eligible to adjust her status to lawful permanent resident under the CAA.

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that she is eligible for adjustment of status. She has not met that burden. The decision of the District Director to deny the application is affirmed.

ORDER: The District Director's decision is affirmed.