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U.S. Department of Justice
Immigration and Naturalization Service

Administrative Case Deferred in
Miami Office - Information
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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



28 MAY 2007

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)

IN BEHALF OF APPLICANT: [Redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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
Robert P. Wiemann, Director
Administrative Appeals Office

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

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 of November 2, 1966. This Act provides for the adjustment of 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, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(2)(D) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(D). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

In response to the notice of certification, the applicant requests that he be excused for all his errors.

Section 212(a)(2)(D) of the Act provides for the inadmissibility of any alien who --

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or....

The record reflects the following:

1. On October 7, 1996, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, [REDACTED] the applicant was indicted for Count 1, procuring for prostitution; and Count 2, deriving support from the proceeds of prostitution. On June 2, 1997, a "nolle pros" was entered on the case.

2. The Federal Bureau of Investigation report shows that on July 19, 1994, in Danbury, Connecticut, the applicant was arrested and charged with prostitution. Although the applicant was requested on July 16, 2001, to submit the court disposition of this arrest, he has failed to comply. On appeal, the applicant states that he was given a "ticket of \$180."

A conviction is not required for a finding of inadmissibility under section 212(a)(2)(D) of the Act. It was held in Matter of G-, 5 I&N 559 (BIA 1953), that the conduct proscribed is prostitution, not the conviction of prostitution or a related crime.

Accordingly, it is concluded the applicant is inadmissible to the United States pursuant to section 212(a)(2)(D) of the Act based on his arrests and/or conviction of procuring for prostitution, deriving support from the proceeds of prostitution, and prostitution. The applicant is not the recipient of an approved waiver of such grounds of inadmissibility, nor is there evidence in the record that he is eligible to file for such a waiver.

In view of the foregoing, the applicant is ineligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.