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U.S. Citizenship
and Immigration
Services



FILE: [REDACTED] Office: MIAMI, FLORIDA Date: AUG 26 2004

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 PETITIONER: 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, Director
Administrative Appeals Office

Identifying data deleted to
prevent disclosure of
unwarranted
invasion of personal privacy

DUPLICATE COPY

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The District Director's decision will be withdrawn, and the matter will be remanded to him for further action.

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 District Director found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See District Director's Decision* dated April 30, 2004.

Section 212(a)(2) of the Act states in pertinent part, that:

(A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

. . . .

Section 212(h) of the Act provides, in pertinent part, that:

(h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

. . . .

- (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

The record reflects that the applicant was convicted and sentenced in Cuba to two years imprisonment for hitting a person over the head with a glass bottle inflicting serious injury. In addition he was convicted for setting fire to a sugarcane field for which he was sentenced to 20 years imprisonment. Furthermore the

applicant was arrested but never convicted for burglarizing a food warehouse and stealing approximately \$3000 worth of merchandize.

The record of proceedings reveals that on August 22, 2003, at the 11th Circuit Court, Miami the applicant was convicted of the offense of burglary, a crime involving moral turpitude. The applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, due to his convictions of crimes involving moral turpitude in the United States and Cuba.

On Notice of Certification the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. No additional evidence has been entered into the record.

As noted above section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. A review of the record of proceedings reveals that the applicant's mother is a Lawful Permanent Resident and therefore the applicant appears to have the required family member in order to be eligible to file a waiver application under section 212(h) of the Act. Accordingly the District Director's decision will be withdrawn and the record will be remanded to him in order to allow the applicant the opportunity to submit a Form I-601 under section 212(h) of the Act.

ORDER: The district director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion.