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

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[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: FEB 02 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

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 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 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 July 15, 2003.

The applicant has provided no statement or additional evidence on notice of certification.

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 on April 6, 1998 the applicant was convicted in the Circuit Court in and for the Dade

County, Florida for the offenses of False Imprisonment and Battery. In addition on August 16, 2000 the applicant was convicted in the Circuit Court in and for the Dade County, Florida for the offense of Aggravated Stalking.

As stated 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, United States citizen or lawfully resident spouse, parent, son, or daughter.

A review of the documentation in the record reflects that the applicant's mother resides in Cuba and that his daughter is not a citizen or lawful permanent resident of the United States. The applicant's spouse is a lawful permanent resident of the Untied States but by the applicant's own admission and written statement they have not resided together since 1997. Thus the applicant would be unable to prove that his deportation would result in extreme hardship to her. The applicant has failed to show that he has a qualified family member in order to be eligible to file for a waiver under section 212(h) of the Act.

The applicant was offered an opportunity to submit evidence in opposition to the district director's findings. In response to the notice of certification, the applicant submitted a letter stating that he believes that he has been reformed, and he wishes to continue to live with his new fiancée and his stepdaughter.

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 he is eligible for adjustment of status. He has failed to meet that burden. The decision of the acting district director to deny the application will be affirmed.

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