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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



*Handwritten signature*

FILE:



Office: MIAMI, FLORIDA

Date:

JUL 23 2004

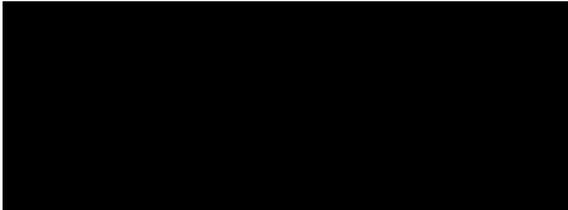
IN RE:

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 PETITIONER:



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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**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 The District Director's decision will be withdrawn, and the matter will be remanded to him for further action.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 applicant failed to show that he has a qualified family member in order to be eligible to file an application for a waiver of grounds of inadmissibility under section 212(h) of the Act. The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See District Director's Decision* dated March 24, 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 on November 20, 1998, the applicant was convicted in the Circuit Court in and for Dade County, Florida for the offenses of Cashing or Depositing Item with Intent to Defraud and Grand Theft

3<sup>rd</sup> Degree. In addition on November 28, 1998, the applicant was convicted in the Circuit Court in and for Dade County, Florida for the offenses of Grand Theft 3<sup>rd</sup> Degree and Uttering a Forge Instrument. The applicant is inadmissible to the United States due to his convictions of crimes involving moral turpitude.

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 at the time the applicant's application for adjustment of status was adjudicated he was single, did not have any children and his parents resided in Cuba. The applicant failed to show that he had a qualified family member in order to be eligible to file a waiver under section 212(h) of the Act.

On Notice of Certification the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. In response to the Notice of Certification, counsel submits a marriage certificate indicating that the applicant married a U.S. citizen on April 17, 2004, and therefore now has the required family member in order to be eligible to file a waiver application under section 212(h) of the Act. In addition counsel submits an Application for Waiver of Grounds of Excludability (Form I-601) with the appropriate fee and supporting documentation.

The applicant appears to have a qualifying relative. Accordingly the District Director's decision will be withdrawn and the record will be remanded to him in order to adjudicate the 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.