U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

A2

[redacted]

FILE: [redacted] Office: MIAMI (ORLANDO) FLORIDA Date: AUG 11 2005

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 District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) 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 (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)(1)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(1)(A)(i), for having a communicable disease of public heath significance, namely the Human Immunodeficiency Virus (HIV). The District Director concluded that the applicant had failed to show that he has a qualifying family member required to file a waiver under section 212(g) of the Act. *See District Director's Decision* dated November 4, 2004.

Section 212(a)(1)(A)(i) of the Act provides, in pertinent part, that:

> (i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with the etiologic agent for acquired immune deficiency syndrome, ... is inadmissible.

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

> The Attorney General may waive the application of subsection (a)(1)(A)(i) in the case of any alien who-
>
> > (A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa.
> >
> > (B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa; in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

The applicant presented a Medical Examination of Aliens Seeking Adjustment of Status (Form I-693), dated March 18, 1998, which indicates that he suffers from a communicable disease of public significance, namely HIV.

A review of the documentation in the record reflects that the applicant is single, does not have any children and his parents reside in Cuba. The applicant has failed to show that he has a qualifying family member required to file a waiver under section 212(g) of the Act.

The applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. On certification the applicant states that when he entered the United States in 1980 he did not suffer from any disease, he has lived in the United States for more that 24 years and does not have a criminal record. In addition the applicant states that he applied twice for adjustment of status prior to contacting the HIV virus, the disease in under control, he cannot stop taking his medication and that his life in Cuba is in danger due to political reasons.

The record of proceeding reflects that the applicant's prior applications were terminated for lack of prosecution. The fact remains that the applicant is inadmissible pursuant to section 212(a)(1)(A)(i) of the Act and he does not have a qualifying family member.

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 District Director to deny the application will be affirmed.

ORDER: The District Director's decision is affirmed.