



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

A2



FILE:



Office: MIAMI, FLORIDA

Date: **DEC 05 2005**

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, 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)(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 crimes involving moral turpitude. In addition, the District Director determined that the applicant was not eligible for adjustment of status because he failed to present documentation required by law to adjust his status. The District Director, therefore, denied the application. *See District Director's Decision* dated May 12, 2005.

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 of proceedings reveals that on December 16, 1982, in the Supreme Court, in and for Queens County, New York, the applicant was convicted of the offenses of robbery 1st degree (2 counts), robbery 2nd degree, using a firearm 1st degree, possession of a weapon 2nd degree, possession of stolen property 1st degree and possession of a weapon 4th degree. In addition, on July 2, 1999, the applicant was arrested for the offense of assault or battery in North Bay Village, Florida.

The applicant is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, based on his convictions of crimes involving moral turpitude.

The regulation at 8 C.F.R. § 245.2(a) states in pertinent part:

(3) Submission of documents.-

(iv) Under the Act of November 2, 1966. An application for adjustment of status is made on Form I-485A. . . . The application must include a clearance from the local police jurisdiction for any area in the United States when the applicant has lived for six months or more since his or her 14th birthday.

The record reflects that on November 24, 2004, the District Director requested that the applicant submit certified copies of the arresting officer's report, and court dispositions for all arrests, including the record showing sentence imposed and time served, or probation information, a police background clearance letter from each county the applicant resided in over the past five years and an Application for Waiver of Grounds of Excludability (Form I-601), along with the appropriate fee and documentation explaining how his removal would result in extreme hardship to his qualifying relatives. The applicant was given until December 24, 2004, to submit the required documentation. The applicant failed to comply with the Service's request and the application for adjustment of status was denied.

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.

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 failed to meet that burden within the required time frame. The decision of the District Director to deny the application will be affirmed.

This decision, however, is without prejudice to the filing of a new application for adjustment of status, along with the proper documentation and the appropriate fee.

ORDER: The District Director's decision is affirmed.