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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



AZ

FILE:



Office: BOSTON, MASSACHUSETTS

Date:

JUL 06 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:

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, Boston Massachusetts, 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 The District Director's decision will be withdrawn, and the matter will be remanded to him for further action.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 crimes 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 November 9, 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)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; . . .

The record reflects that the applicant has the following convictions:

July 7, 1987, in the Superior Court at the city of Cambridge, within and for the County of Middlesex, Commonwealth of Massachusetts the applicant was convicted of the offense of breaking and entering in the nighttime, a dwelling house, with intent to commit a felony, to wit: arson. The applicant was sentenced to ten years imprisonment

July 9, 1987, in the Superior Court at the city of Cambridge, within and for the County of Middlesex, Commonwealth of Massachusetts the applicant was convicted of the offense of willfully and maliciously setting fire to burn or cause to be burned a dwelling house. The applicant was sentenced to five years probation.

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.

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.

The standard rule followed by CIS is that an application for admission or adjustment is a "continuing" application adjudicated based on the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I & N Dec. 557 (BIA 1992). The record clearly reflects that the applicant's last conviction, on July 9, 1987, occurred more than 15 years prior to the District Director's decision. The applicant, as of today, is still seeking admission by virtue of adjustment from his parole status. He is, thus, eligible to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) under the provisions of section 212(h)(1)(A) 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.