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

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: JUL 19 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 The District Director's decision will be withdrawn, and the matter will be remanded to him for further action.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. *See District Director's Decision* dated November 1, 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 the following convictions:

January 3, 1983, in the Circuit Court of Miami-Dade Country, Florida the applicant was convicted of the offenses of burglary of a structure and grand theft in the 2nd degree. He was sentenced to three years imprisonment.

January 6, 1988, in the Circuit Court of Miami-Dade Country, Florida the applicant was convicted of the offense of aggravated assault and was sentenced to 18 months probation

Based on his convictions 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.

The record of proceeding reveals that on October 30, 2000, the applicant was instructed to submit 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 relative. According to the District Director the applicant failed to comply with the Service's request and did not file the required waiver application.

On certification the applicant states that he did forward a Form I-601, along with the appropriate fee and other documentation to the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) on December 27, 2000. The applicant submits a copy of the Form I-601 and requests that the District Director's decision be reconsidered.

A review of the record reveals that a Form I-601 was received by the AAO on March 7, 2005, after receipt of the record. Attached to the Form I-601 was a money order issued on December 26, 2000, and copies of the applicant's police records issued by the Miami-Dade police department dated December 6, 2000. It is unclear from the record if the applicant forwarded the documents to the AAO or if they were received timely by the District office and not forwarded to the record until now. Based on the applicant's statement and the fact that the money order was issued on December 26, 2000, the AAO will accept the applicant's contention that he forwarded the required documents within the allotted time.

It is noted that a search of the electronic records of Citizenship and Immigration Services (CIS) reveals that the applicant has another Service file under number A97 551 983 that should be consolidated with Service file A22 801 664.

In view of the foregoing, 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.