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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

Ad



FILE:



Office: JACKSONVILLE, FLORIDA Date:

JUL 22 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 APPLICANT:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Officer in Charge, Jacksonville, Florida, and who certified the decision to the Administrative Appeals Office (AAO) for review. The Officer in Charge'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 Officer in Charge found the applicant inadmissible to the United States because he fell within the purview of sections 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act) for having been convicted of a crime involving moral turpitude. The Officer in Charge, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See Officer in Charge Decision* dated August 26, 2004.

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 record reflects that on January 17, 1991, the applicant was admitted to the United States as a refugee (RE1) under section 207 of the Act. On November 19, 2001, the applicant filed for adjustment of status under section 1 of the CAA.

The statute clearly states that the provisions of section 1 of the CAA of November 2, 1966, shall be applicable to any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States, and who has been physically present in the United States for at least one year.

In reviewing the status of an alien applying for benefits under section 2 of the CAA of November 2, 1966, the Regional Commissioner determined that an applicant who had been admitted as an immigrant in possession of a valid immigrant visa had never "originally" arrived in the United States as a nonimmigrant or parolee subsequent to January 1, 1959. In reaching this conclusion, the Regional Commissioner stated that "[s]ection 1 obviously refers to those Cuban refugees who were inspected and admitted as nonimmigrants or paroled into the United States." *Matter of Benguria Y Rodriguez*, 12 I&N Dec. 143 (Reg. Comm. 1967), *reaffirmed* by *Matter of Baez Ayala*, 13 I&N Dec. 79 (Reg. Comm. 1968).

Section 101(a)(15) of the Immigration and Nationality Act (the Act), states in pertinent part: "The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens . . ." It continues to list all the nonimmigrant classifications. Refugees are not included in the list, therefore, they are considered to be immigrants.

In the present case, the applicant was admitted as a refugee under section 207(a) of the Act, and not as a parolee or nonimmigrant. A search of the electronic database of Citizenship and Immigration Services (CIS) does not reveal that the applicant's refugee status has been terminated and therefore the applicant continues to be a refugee within the meaning of section 101(a)(42) of the Act. Therefore, the benefits of section 1 of the CAA are not available to the applicant.

Accordingly, the applicant is ineligible for adjustment of status to permanent residence, pursuant to section 1 of the CAA of November 2, 1966.

In relation to the OIC's findings, section 212(a)(2) of the Act states in pertinent part, that:

(A) Conviction of certain crimes.-

(i) In general.-Except as provided in clause (ii), any 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.

The record reflects that on August 24, 1993, in the Circuit Court of the Eleventh Judicial circuit in and for Dade County, Florida the applicant convicted of leaving the scene of an accident involving injury or death, a crime involving moral turpitude and is therefore inadmissible under section 212(a)(2) of the Act.

The AAO notes that the applicant may eligible to file an application for adjustment of status to permanent residence pursuant to section 209 of the Act. The applicant remains inadmissible pursuant to section 212(a)(A)(i)(I) of the Act, for having been convicted of a crime involving moral turpitude but he may be eligible to file an Application by Refugee for Waiver of Grounds of Excludability (Form I-602).

ORDER: The Officer in Charge's decision is affirmed.