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U.S. Citizenship  
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Services

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*AS*

**MAR 23 2005**

FILE: [REDACTED] Office: MIAMI, FLORIDA Date:

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*

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)(3)(D)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(3)(D)(i), for having been an active member of the Communist Party in Cuba and had not terminated his membership two years prior to the filing of his Form I-485. *See District Director's Decision* dated June 24, 2004.

Section 212(a)(3) of the Act states in pertinent part, that:

(D) Immigrant membership in totalitarian party.-

(i) In general. -Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.

. . . .

(iii) Exception for past membership. -Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that-

(I) the membership or affiliation terminated at least-

(a) 2 years before the date of such application, or

(b) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date, and

(II) the alien is not a threat to the security of the United States.

(iv) Exception for close family members. -The Attorney General may, in the Attorney General's discretion, waive the application of clause (i) in the case of an immigrant who is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States or a spouse, son, or daughter of an alien lawfully admitted for permanent residence for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if the immigrant is not a threat to the security of the United States.

The record reflects that the applicant was paroled into the United States on December 13, 1999. On January 12, 2001, he filed his application for adjustment of status to that of a lawful permanent resident under section 1 of the CAA. On March 13, 2003, in a sworn statement he stated that he was an active member of the communist party in Cuba from 1968 until 1999.

The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(3)(D)(i) of the Act, for having been an active member of the Communist Party in Cuba.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. The applicant states that he should qualify for the exception under section 212(a)(3)(D)(iv) of the Act, as he is the brother of a U.S. citizen. The applicant states that his sister has been a U.S. citizen since 1976. In addition the applicant states that he should qualify for the exception under section 212(a)(3)(D)(iii) of the Act because he had been asking for the termination of his membership in the communist party a few months before the final termination of his membership in July 1999.

The applicant does not submit any documentary evidence to support his claim that his sister is a U.S. citizen in order to qualify for the exception pursuant to section 212(a)(3)(D)(iv) of the Act, for close family members. The applicant states that he should qualify for an exception pursuant to section 212(a)(3)(D)(iii) of the Act, because he had been asking for the termination of his membership in the communist party a few months before the final termination in July 1999. Section 212(a)(3)(D)(iii)(I)(b) of the Act provides for an exception for past membership, if the membership was terminated at least 5 years before the adjustment of status application was filed and the applicant is not a threat to the security of the United States. The applicant in the present case filed his application on January 12, 2001. Even if this office accepts the applicant's statement that he attempted to terminate his membership prior to July 1999, he would still not qualify for an exception under section 212(a)(3)(D)(iii)(I)(b) of the Act, since the termination of his membership would not have been at least 5 years before the date he filed for adjustment of status.

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 for adjustment of status will be affirmed.

This decision, however, is without prejudice to the filing of a new application for adjustment of status with the appropriate fee, now that it has been more than five years since his membership has been terminated.

**ORDER:** The District Director's decision is affirmed.