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U.S. Citizenship
and Immigration
Services

A2

FILE:

Office: MIAMI, FLORIDA

Date: **NOV 18 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.

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 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)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I). The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See District Director's Decision* dated May 31, 2005.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who -

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such aliens' departure or removal is inadmissible.

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

. . . .

(v) Waiver. - The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the applicant was paroled into the United States on July 11, 1995, until July 10, 1997. The applicant remained longer than authorized and was unlawfully present in the United States from July 11,

1997, until his application for adjustment of status was filed. A review of the documentation in the applicant's service file confirms that his Application to Register Permanent Residence or Adjust Status (Form I-485) was received by the Immigration and Naturalization Service (now, Citizenship and Immigration Services, (CIS)) on November 15, 2000. The applicant accrued unlawful presence from July 11, 1997, to November 15, 2000, a period of more than one year, making him inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record indicates that the applicant departed the United States on an unknown date and he was paroled back on February 21, 2001. It was this departure that triggered his unlawful presence. Pursuant to section 212(a)(9)(B)(i)(II) he is barred from seeking admission within ten years of the date of his departure.

The AAO notes that the District Director erroneously stated in his decision that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act. Section 212(a)(9)(B)(i)(I) of the Act deals with individuals who were unlawfully present in the United States for a period of more than 180 days but less than 1 year. In his decision, the District Director clearly states that the applicant was unlawfully present in the United States from July 10, 1997, until November 17, 2000, a period of more than one year. The AAO finds this typographical error to be harmless since it does not affect the outcome of the decision.

As stated above, section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, a U.S. citizen or lawfully resident spouse or parent. His U.S. citizen children are not qualifying relatives.

A review of the documentation in the record of proceedings reflects that the applicant is single, his mother resides in Cuba and his father in Miami, Florida, but neither is a resident or citizen of the United States. Therefore the applicant does not have the qualifying family member required to file a waiver under section 212(a)(9)(B)(v) of the Act.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. The applicant submits a letter in which he states that in August of 1996 he applied for permanent resident status through an agency. The applicant states that after not hearing from the Immigration Department he tried to contact the agency with no success. He further states that in 2000, he reapplied for permanent resident status and at no time did anyone inform him that his parole status had expired. Finally, the applicant requests that his application be reviewed and reconsidered because he has two U.S. citizen children who depend on him.

The applicant's statements are unpersuasive. The applicant was in possession of an Arrival-Departure Record (Form I-94) indicating that his parole status was valid until July 10, 1997. It was the applicant's responsibility to keep his status current.

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 will be affirmed.

The AAO notes that the applicant was arrested and found guilty of possession of marijuana and therefore he is also inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for a violation of any law or regulation relating to a controlled substance.

ORDER: The District Director's decision is affirmed.