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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy**

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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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The Acting 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 Acting 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 not having terminated his membership five years prior to the filing of his Application to Register Permanent Residence or Adjust Status (Form I-485). See *Acting District Director's Decision* dated July 11, 2005.

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 July 24, 2002. On September 16, 2003, the applicant filed a Form I-485 under section 1 of the CAA of November 2, 1966. On October 29, 2004, the applicant appeared before Citizenship and Immigration Services (CIS) for an interview regarding the application for permanent residence. On the same date, in a sworn statement, the applicant stated that he was an active member of the communist party in Cuba from 1974 until 2002, that his membership was voluntary, and that he attended monthly meetings. In addition, the applicant stated that from 1991 until 1997 he was an active member of the Central Committee of the Party. Finally, the record of proceeding indicates that the applicant was the Cuban delegate to the United Nations.

Based on the above facts, the applicant is 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.

A review of the documentation in the record reflects that the applicant is divorced, that his child resides in Cuba, and that both his parents are deceased. No information was provided to show whether the applicant has a sibling who is a U.S. citizen. Therefore, the applicant is ineligible for the exceptions in sections 212(a)(3)(D)(iii) or 212(a)(3)(D)(iv) of the Act.

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.

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, when more than five years have passed since his membership with the Communist Party was terminated.

ORDER: The District Director's decision is affirmed.