

PUBLIC COPY

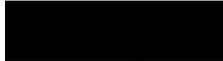
**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



U.S. Citizenship
and Immigration
Services

A2

FILE:



Office: ATLANTA, GEORGIA

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 District Director, Atlanta, Georgia, who certified her 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 237(a)(2)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(2)(E)(i), as an alien who at any time after entry has been convicted of a crime of domestic violence. The District Director, therefore, concluded that the applicant was statutorily ineligible for adjustment of status and denied the application accordingly. *See District Director's Decision* dated April 13, 2005.

The AAO finds that the District Director erred in her decision finding the applicant subject to section 237(a)(2)(E)(i) of the Act. Section 237(a) of the Act is not applicable in this case because this section of the Act refers to deportable aliens who are “. . . in and admitted to . . .”. The applicant in the present matter was paroled into the United States on January 24, 1996, and therefore, he was never admitted into the United States. The AAO finds this error to be harmless since it does not affect the outcome of the decision.

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 June 10, 1999, in the State Court of DeKalb County, State of Georgia, the applicant was convicted of the offense of family violence battery, and he was sentenced to 12 months imprisonment.

Based on the applicant's conviction he is clearly inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude.

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

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, a U.S. citizen or lawfully resident spouse, parent, son, or daughter.

A review of the documentation in the record does not reflect that the applicant has the qualifying family member required to file a waiver under section 212(h) of the Act. The AAO notes that although the applicant does not seem to have the qualifying family member required to file a waiver, on October 26, 2004, he was instructed to submit an Application for Waiver of Grounds of Excludability (Form I-601), along with the appropriate fee and supporting documentation. The applicant failed to comply with the Service's request and has not file a Form I-601.

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.

ORDER: The District Director's decision is affirmed.