



U.S. Citizenship  
and Immigration  
Services

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*AL*

[REDACTED]

FILE:

[REDACTED]

Office: ORLANDO, FLORIDA

Date: SEP 29 2005

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)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See District Director's Decision* dated November 3, 2004.

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 . . . .

The District Director determined that the applicant has been convicted of aggravated assault and carrying a concealed weapon and therefore he is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. In response to the notice of certification the applicant submits a letter in which he states that he never went to jail for offenses and instead he joined a rehabilitation program for his alcohol addiction problem.

As stated above in order to be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act an individual must be either convicted, or has admitted having committed acts which constitute the essential elements of a crime involving moral turpitude. It is irrelevant if the applicant was incarcerated.

The record of proceedings reveals that the applicant plead guilty of the offense of aggravated assault and therefore he is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act. 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, United States citizen or lawfully resident spouse, parent, son, or daughter.

A review of the documentation in the record reflects that the applicant is divorced, his parents are deceased and his children reside in Cuba. The applicant has failed to show that he has the qualifying family member required to file a waiver under section 212(h) of the Act.

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.