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U.S. Citizenship  
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FILE: [REDACTED] Office: NEWARK, NEW JERSEY Date: JUN 09 2006

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:



**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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Newark, New Jersey, who certified his decision to the Administrative Appeals Office (AAO) for review. The District Director's decision will be withdrawn, and the matter will be remanded to him for further action.

The applicant is a native and citizen of Cuba who filed an 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 statutorily ineligible for adjustment of status 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 and denied the application accordingly. *See District Director's Decision* dated March 30, 2006.

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 AAO notes that the notice of certification was returned as undeliverable because it was not forwarded to the applicant's address noted on the Notice of Entry of Appearance as Attorney or Representative (Form G-28) and on his application for adjustment of status.

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), (B) . . . of subsection (a)(2) . . . if

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more

than 15 years before the date of the alien's application for a visa, admission, or adjustment of status, and

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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 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 record reflects that on January 13, 1983, in the United States District Court for the Southern District of Florida, the applicant was convicted of the offense of trafficking counterfeit obligations of the United States in violation of Title 18 U.S.C. Section 473 and 18 U.S.C. Section 2. The applicant was sentenced to four years imprisonment, which was converted to six months imprisonment and five years probation.

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

As stated above, section 212(h) of the Act provides for a waiver of inadmissibility pursuant to section 212(a)(2)(A)(i)(I) of the Act, and, therefore, the AAO finds that the District Director erred in his decision stating that the applicant is statutorily ineligible for adjustment of status.

The record clearly reflects that the applicant's conviction, in 1983, was more than 15 years ago and, therefore, he may be eligible for consideration of a waiver pursuant to section 212(h)(1)(A) of the Act. In addition, as noted above, section 212(h)(1)(B) of the Act provides for a waiver upon a showing that the bar imposes an extreme hardship on a qualifying family member. A review of the record of proceeding reveals that the applicant's spouse may be a U.S. citizen. The applicant may be eligible to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) either under section 212(h)(1)(A) of the Act, since his last conviction was more than 15 years ago, or under section 212(h)(1)(B) of the Act, as he appears to have a qualifying family member as required by law. Accordingly, the District Director's decision will be withdrawn and the record will be remanded to him in order to allow the applicant the opportunity to submit a Form I-601 under section 212(h) of the Act.

**ORDER:** The District Director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion.