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U.S. Citizenship
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Services

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DEC 07 2007

FILE:

Office: ORLANDO, FL

Date:

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 APPLICANT:

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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting Field Office Director, Orlando, Florida who certified her decision to the Administrative Appeals Office (AAO) for review. The Acting Field Office Director's decision will be affirmed.

The applicant is a native and citizen of Cuba who on May 2, 2005 filed the 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 Field Office Director found the applicant inadmissible to the United States because he falls within the purview of Section 212(a)(6)(E) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6) and is not eligible for a waiver. The Acting Field Office Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See Acting Field Office Director's Decision*, dated July 23, 2007.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the Acting Field Office Director's findings. The applicant did not submit any additional brief or written statement.

The record establishes that on June 28, 1992 the applicant was paroled into the United States. *Form I-94*. On August 18, 1993 the applicant was interdicted by the United States Coast Guard at sea. *ASU Initial Report*, undated. Seven Cuban migrants were aboard the boat. *Id.* The applicant was placed into immigration court proceedings and charged with violating sections 212(a)(6)(E)(i) and 212(a)(7)(A)(i)(I) of the Act. *Form I-110*, dated August 25, 1993. On January 11, 1996 the applicant failed to appear for his immigration court hearing and was ordered excluded and deported from the United States. *Order of the Immigration Judge, Executive Office for Immigration Review, Miami, Florida*, dated January 11, 1996.

The record also establishes that on May 12, 1994 the applicant was convicted of simple assault under section 784.011 of the Florida Statutes. *Court records, Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida*, dated May 13, 1994. The applicant was ordered to pay a fine. *Id.* On August 30, 1994 the applicant was convicted of grand theft under section 812.014 of the Florida Statutes. *Court records, Circuit Court of Monroe County, Florida*, dated August 30, 1994. The applicant was placed on probation for two years and ordered to pay fines. *Id.* On September 20, 1994 the applicant was found guilty of altering tags under section 320.061 of the Florida Statutes, driving without a license under section 322.34 of the Florida Statutes, ATNA under section 320.261 of the Florida Statutes, and obstruction – R A w/o V under section 843.02 of the Florida Statutes. *Court records, County Court of the Sixteenth Judicial Circuit in and for Monroe County, Florida*, dated September 20, 1994. The applicant was ordered to pay a fine and placed on probation for six and twelve month terms. *Id.* On July 27, 1995 the applicant was convicted of grand theft under section 812.014 of the Florida

Statutes. *Court records, Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida*, dated July 27, 1995. The applicant was sentenced to a term of imprisonment for four months. *Id.* On September 19, 1995 the applicant was found guilty of a violation of probation. *Court records, County Court of the Sixteenth Judicial Circuit in and for Monroe County, Florida*, dated September 19, 1995. On July 10, 2000 the applicant was convicted of soliciting for prostitution under section 796.07 of the Florida Statutes. *Court records, County Court, Criminal Division in and for Palm Beach County, Florida*, dated July 11, 2000. The applicant was placed on probation for six months and ordered to pay fines. *Id.*

Section 212(a)(6) of the Act states in pertinent part:

(E) Smugglers.—

(i) In general.—Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

(ii) Special rule in the case of family reunification.—Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The AAO notes that on January 11, 1996 the applicant failed to appear for his immigration court hearing. *See Order of the Immigration Judge, Executive Office for Immigration Review, Miami, Florida*, dated January 11, 1996. As a result, the immigration judge ordered the applicant excluded and deported from the United States for the reasons set forth in the charging document which charged the applicant under section 212(a)(6)(E)(i) of the Act. *Id.*; *See Also Form I-110, Order to Show Cause*. Apart from failing to appear for his immigration court hearing in 1996, the applicant, upon notice of certification, has not provided any additional statements or evidence to rebut the Acting Field Office Director's finding that he is inadmissible to the United States under section 212(a)(6)(E) of the Act. The applicant has failed to show that he is not inadmissible for alien smuggling and he does not qualify for the exemption available under section 212(a)(6)(E)(ii). Accordingly, the AAO concurs with the Acting Field Office Director's finding that the applicant is inadmissible under section 212(a)(6)(E) of the Act and that no waiver is available to him.

An applicant must demonstrate by a preponderance of the evidence that he is eligible for the benefit sought. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, places the burden of proof upon the applicant to establish that eligibility. The applicant has not met his burden of proof in this particular case. The decision of the Acting Field Office Director to deny the application will be affirmed.

ORDER: The Acting Field Office Director's decision is affirmed.