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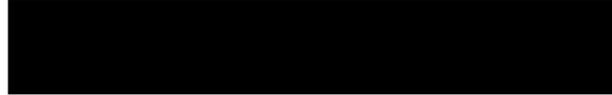
FILE:

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:

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.

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 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 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)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2). Specifically, the Acting Field Office Director determined that the applicant had been convicted of second degree homicide, an inadmissibility ground for which no waiver is available. 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 June 18, 2007.

Section 212(a)(2) of the Act states in pertinent part:

(A) Conviction of certain crimes.-

(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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) . . . is inadmissible.

(B) Multiple criminal convictions.—Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

- (i) . . . 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,
- (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

(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 . . .

No waiver shall be provided under this subsection in the case of an alien who has been convicted (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture...

The record establishes that on April 3, 1982 the applicant was arrested for indecent exposure. *FBI printout report*. The disposition for this arrest is unclear. On May 15, 1982 the applicant was arrested for possession of marijuana. *Id.* The disposition for this arrest is unclear. On May 15, 1987 the applicant was arrested for battery/child abuse under section 784.03 of the Florida Statute. *Id.* The disposition for this arrest is unclear. On January 12, 1989 the applicant was arrested for larceny. *Id.* On February 24, 1989 he was convicted. *Id.* The record does not include the sentence for this conviction. On September 15, 1989 the applicant was arrested for cruelty toward a child/aggravated abuse and child neglect. *Id.* The disposition for this arrest is unclear. On October 19, 1989 the applicant was arrested for probation violation. *Id.* The disposition for this arrest is unclear. On November 20, 1989 the applicant was convicted of grand theft (auto) under section 812.014(1)(a) of the Florida Statute. *Court records, Circuit Court, Seventeenth Judicial Circuit, in and for Broward County, Florida*, dated November 20, 1989. He received a sentence of 18 months imprisonment. *Id.* On June 4, 1990 the applicant was convicted of larceny under section 812.014 of the Florida Statute. *FBI printout report*. The record does not include the sentence for this conviction. On December 14, 1990 the applicant was arrested for aggravated assault with a weapon. *Id.* On January 3, 1991 the applicant was arrested for homicide-willful killing-weapon in the first degree. *Id.* On June 24, 1991 the applicant was convicted of aggravated battery and aggravated assault. *Court records, Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida*, dated August 9, 1991. He received a sentence of nine years in prison for the aggravated battery conviction and five years in prison for the aggravated assault conviction. *Id.* He was also placed on probation for two years. *FBI printout report*. On July 24, 1991 the applicant pled nolo contendere to murder in the second degree for which he received a nine year sentence to run concurrently with his aggravated assault conviction.

Court records, Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. On January 6, 2001 the applicant was arrested of driving under the influence under section 316.193 of the Florida Statute. *Id.* The disposition for this arrest is unclear. On August 21, 2001 the applicant was arrested for driving under the influence under section 316.193 of the Florida Statute. *Id.* The disposition for this arrest is unclear. On May 25, 2004 the applicant was arrested for contempt of court under section 901.11 of the Florida Statute. *Id.* The disposition for this arrest is unclear. The record also shows that on March 24, 1992 the applicant was ordered excluded and deported from the United States for being an aggravated felon. *See Decision of the Immigration Judge, United States Immigration Court, dated March 24, 1992.*

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 AAO concurs with the Acting Field Office Director's finding that the applicant is inadmissible under section Section 212(a)(2) of the Act and is not eligible for a waiver under section 212(h) because of his murder conviction. The applicant is thus ineligible for adjustment of status to permanent residence, pursuant to Section 1 of the CAA of November 2, 1966.

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.