

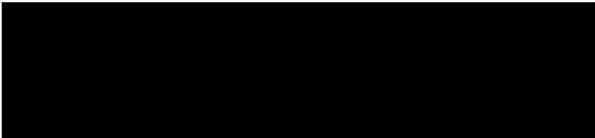
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U.S. Department of Homeland Security  
20 Mass. Ave., NW, Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:  Office: NEW ORLEANS, LA

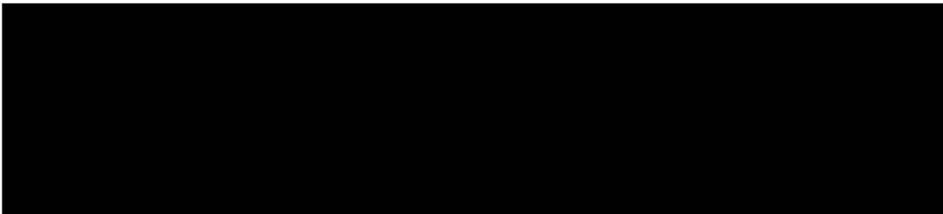
Date:

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IN RE: 

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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for adjustment of status was denied by the District Director, New Orleans, Louisiana 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 212(a)(1)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(1)(A)(i). The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See District Director's Decision* dated June 16, 2007.

Section 212(a)(1)(A) of the Act states in pertinent part:

(1) *Health-related grounds.*—

(A) *In general.*—Any alien—

(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with the etiologic agent for acquired immune deficiency syndrome...

is inadmissible.

(B) *Waiver authorized.*—For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

Section 212(g), 8 U.S.C. § 1182(g), reads, in pertinent part:

(g) The Attorney General [now Secretary of Homeland Security] may waive the application of—

(1) subsection (a)(1)(A)(i) in the case of any alien who—

- (A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa,
- (B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa; or
- (C) qualifies for classification under clause (iii) or (iv) of section 204(a)(1)(A) or classification under clause (ii) or (iii) of section 204(a)(1)(B);

in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

The record reveals that the applicant has tested positive for HIV infection. *Form I-693, Medical Examination of Aliens Seeking Adjustment of Status; Letter from [REDACTED] M.D., No AIDS Task Force*, dated September 20, 2006.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. In response, the applicant has submitted a statement that indicates he has health insurance and life insurance, is affiliated with a non profit organization that assists and provides service for HIV+ clients, and has a home. *Applicant's statement*, dated June 25, 2007. The applicant also provides a letter to establish that he is successfully employed with the Louisiana Office of Public Health HIV/AIDS Program and certificates that indicate he is a Certified HIV Prevention Counselor and has completed training in advocacy and HIV testing. *Letter from [REDACTED] Latino Outreach Coordinator, State of Louisiana, Department of Health and Hospitals*, dated June 21, 2007; *Certificate from the Louisiana Office of Public Health*, dated August 30, 2006; *Certificate from the Academy for Educational Development for training completed November 28-30, 2006*; *Certificate of Participation in HIV Prevention Rapid Testing Training, August 16, 2006 – August 17, 2007*. The applicant did not contest the District Director's finding that he does not have a qualifying relative that would allow him to apply for a waiver under section 212(g) of the Act.

The AAO concurs with the District Director's finding that the applicant is inadmissible under section 212(a)(1)(A)(i) of the Act and is not eligible to apply for a waiver of this ground of inadmissibility under section 212(g) of the Act. Based on the Form I-601, Application for Waiver of Grounds of Inadmissibility, and the Form G-325A, Biographical Information Sheet, submitted by the applicant, he has no immediate family members in the United States. Further, he has submitted no evidence to currently establish that any immediate family member is currently the recipient of an immigrant visa. Accordingly, he does not have the qualifying relative required for a waiver under section 212(g) of the Act.

The decision of the District Director to deny the application will be affirmed. 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.

**ORDER:** The District Director's decision is affirmed.