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U.S. Citizenship
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Services

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FILE:



Office: NEWARK, NJ

Date:

NOV 30 2007

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 cursive script, 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 The District Director's decision will be withdrawn and the case remanded to the District to provide the applicant an opportunity to file a waiver of inadmissibility.

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 District Director found the applicant inadmissible to the United States because he falls within the purview of Section 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(B). 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 March 21, 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.

(D) Prostitution and commercialized vice.—Any alien who—

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or

attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution...

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 . . .

The record establishes that on September 6, 1984 the applicant was convicted of promoting for profit a house of prostitution and sentenced to five years probation. *FBI printout report*. On October 30, 1991 the applicant was convicted of shoplifting under section 2C:20-11 of the New Jersey Statutes and was ordered to pay fines. *Id.* On February 11, 1992 the applicant was convicted of shoplifting under section 2C:20-11 of the New Jersey Statutes and was sentenced to 60 days confinement and ordered to pay fines. *Id.* On September 30, 1992 the applicant was convicted of shoplifting under section 2C:20-11 of the New Jersey Statutes and was sentenced to 30 days confinement and ordered to pay fines. *Id.* On October 6, 1992 the applicant was convicted of shoplifting under section 2C:20-11 of the New Jersey Statutes and was sentenced to 45 days confinement and fines. *Id.* On May 22, 1997 the applicant was convicted of shoplifting under section 2C:20-11b(1) of the New Jersey Statute and sentenced to 90 days confinement, two years probation, and fines. *Id.* On March 20, 2003 the applicant was convicted of felony shoplifting under section 2C:20-11 of the New Jersey Statutes. *Id.* The sentence the applicant received is unclear.

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

The AAO notes that the District Director found the applicant to be inadmissible under section 212(a)(2)(B) of the Act for having two or more criminal convictions for which the aggregate sentences to confinement were five years or more. *District Director's Decision*, dated March 21, 2007. The AAO disagrees with the District Director's finding. While the applicant was placed on probation in excess of an aggregate of five years, the evidence of the record does not indicate that the applicant was sentenced to confinement for a period of five years or more. As such, the AAO does not find the applicant to be inadmissible under section 212(a)(2)(B) of the Act.

The applicant's 1984 conviction for promoting for profit a house of prostitution occurred over 10 years prior to the date of his Form I-485 application to adjust status to lawful permanent residence. *FBI printout report*. The AAO therefore finds that the applicant is not inadmissible under section 212(a)(2)(D)(ii) of the Act. The AAO notes that the applicant's convictions for 4th degree shoplifting under section 2C:20-11 of the New Jersey Statutes are crimes involving moral turpitude. *See Da Rosa Silva v. INS*, 263 F.Supp. 2d 1005, 1010-12 (E.D. Pa. 2003), which finds that shoplifting in violation of N.J. Stat. Annot. § 2C:20-11(b)(1) is a crime involving moral turpitude. The AAO notes that all of the definitions of shoplifting under section 2C:20-11(b) of the New Jersey Statutes include the same element of intent. The AAO therefore finds that the applicant is inadmissible under section 212(a)(2)(A) of the Act.

The AAO observes that the applicant has a United States citizen son. *See Form I-485, Application to Register Permanent Residence or Adjust Status*. As such, the applicant appears to be eligible to apply for a waiver of inadmissibility under section 212(h)(1)(B) of the Act. As the applicant has not been provided with an opportunity to file a waiver of inadmissibility, the District Director's decision will be withdrawn and the case remanded to the District Office.

ORDER: The decision of the District Director is withdrawn and the application for adjustment of status will be remanded to the District Office of Newark, New Jersey to provide the applicant with the opportunity to file a Form I-601 waiver of inadmissibility.