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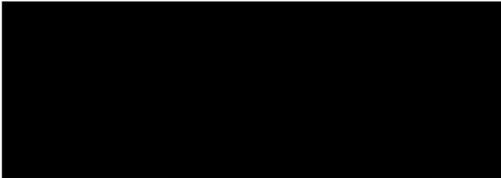
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



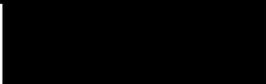
U.S. Citizenship  
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FILE:



Office: NEWARK, NEW JERSEY

Date: OCT 30 2007

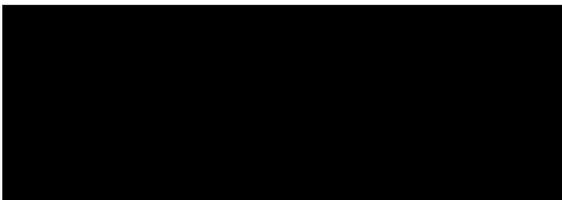
IN RE:

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:



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.

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 The District Director's decision will be withdrawn and the case remanded to provide the applicant with an opportunity to file a Form I-601 waiver of inadmissibility.

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)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(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 October 27, 2005.

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

(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.

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) . . . of subsection (a)(2) . . . if -

(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 reveals that in New Jersey, the applicant was arrested on August 9, 1990 for larceny. *FBI printout report*. He was found guilty and received a sentence of six months confinement and one year probation. *Id.* On August 14, 1990 the applicant was arrested for receiving stolen property. *Id.* He was found guilty and ordered to pay a fine. *Id.* On June 16, 1992, the applicant was arrested for receiving a stolen vehicle. *Id.* He was found

guilty and received a sentence of 90 days confinement and one year probation. *Id.* On October 7, 1992 the applicant was arrested for disorderly conduct. *Id.* He was found guilty and received a sentence of 90 hours of community service and was fined. On December 14, 1992 the applicant was arrested for theft in the third degree. *Id.* He was found guilty and sentenced to three days jail credit and three years probation. *Id.* See Also criminal court records, New Jersey Superior Court, Hudson County. On November 16, 1994 the applicant was arrested for resisting arrest. *Id.* He was found guilty and sentenced to one day jail credit and four years probation. *Id.* On July 12, 1998 the applicant was arrested for shoplifting. *FBI printout report.* He was found guilty and sentenced to three months confinement and one year probation. *Id.* On October 21, 2001 the applicant was arrested for resisting an officer without violence. *Id.* He was found guilty and received a sentence of six months probation. On October 21, 2001 the applicant was arrested for property damage/criminal mischief for which he was found guilty. *Id.* The record does include information regarding any sentence.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. Counsel submitted a brief on behalf of the applicant. *Attorney's brief.* In his brief, counsel asserts that the applicant's offenses do not constitute felonies and, as such, do not preclude the applicant from adjusting his status to lawful permanent resident. *Id.* Counsel also states that section 212(a)(2)(B) pertains to the applicant, noting that he was not incarcerated for theft and resisting arrest, and would thus remain eligible for adjustment of status. *Id.* The AAO finds that counsel has erred in his analysis.

Section 212(a)(2)(B) states in pertinent part:

(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.

Counsel is correct in asserting that the applicant was not sentenced in the aggregate to confinement of 5 years or more. However, counsel erred in his analysis by finding that this section of the Act pertained to the applicant. The applicant is not inadmissible because of section 212(a)(2)(B). The applicant is inadmissible under section 212(a)(2)(A) for having been convicted of crimes involving moral turpitude. The analysis of whether the applicant's convictions constitute felonies or misdemeanors in the criminal context is irrelevant in determining whether the applicant was convicted of a crime involving moral turpitude. The applicant's conviction for shoplifting constitutes a crime involving moral turpitude. *Da Rosa Silva v. INS*, 263 F. Supp. 2d 1005 (E.D. Pa. 2003)(noting that shoplifting in violation of New Jersey Statute Annon. §2C:20-11(b)(1) is a crime involving moral turpitude). The applicant's conviction under Florida Statute §806.13(1)(b)(2) for criminal mischief is also a crime involving moral turpitude (noting that the statute involves willful and malicious intent elements).

As the applicant has been convicted of crimes involving moral turpitude under Section 212(a)(2)(A)(i)(I) of the Act, the applicant is ineligible for adjustment of status to permanent residence, pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966. The record reflects that while the applicant is not married and does not have any children (*Form I-485*), the applicant's father is a United States citizen. See *naturalization certificate; Form I-864, Affidavit of Support.* As the applicant is the son of a United States citizen, he is eligible to apply for

a waiver of inadmissibility under Section 212(h) of the Act. The AAO notes that while the applicant is eligible to apply for a waiver, he remains ineligible for adjustment until such time as he files.

The AAO concurs with the District Director's finding that the applicant is inadmissible; however, the decision of the District Director to deny the application will be withdrawn and the case remanded back to the District Director to provide the applicant with an opportunity to file a Form I-601 waiver of inadmissibility.

**ORDER:** The District Director's decision is withdrawn and the case is remanded to provide the applicant with an opportunity to file a Form I-601 waiver of inadmissibility.