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U.S. Citizenship  
and Immigration  
Services

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PUBLIC COpy



FILE:



Office: MIAMI, FL (ORLANDO)

Date: OCT 30 2007

IN RE:

Applicant:



APPLICAnON: Application for Pennant Residence Pursuant to Section I 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, which appears to read "Robert P. Wiemann", is written over the typed name.

Robert P. Wiemann, Chief  
Administrative Appeals Office

DISCUSSION: The application was denied by the District **Director**, Miami, Florida 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 the application for adjustment of status to that of a lawful permanent resident under Section I 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). 8 U.S.C. § 1182(a)(2)(A)(i); Section 212(a)(2)(A)(ii), 8 U.S.C. § 1182(a)(2)(A)(ii); and Section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(C). 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 **February** 23, 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.

(C) Controlled substance traffickers.-

Any alien who the consular officer or the Attorney General knows or has reasons to believe-

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or.....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 -

(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 June 5, 1981 the applicant was arrested for carrying a loaded **firearm** in a public place in Los Angeles, California. *Criminal History Transcript, State of California, Department of Justice, Bureau of Criminal Identification*. The record does not **contain** police reports or court dispositions for this **arrest**. August 24, 1981 the applicant was arrested and convicted for loitering and prowling in Miami, Florida. *FBI printout report*. The applicant failed to provide **requested** police reports or **court dispositions** for this arrest. On December 4, 1981 the applicant was arrested for **grand larceny** in **Hialeah**, Florida. *Id.* The applicant failed to provide requested police reports or court dispositions for this arrest. On April 18, 1985 the applicant was **arrested** in Miami, Florida for loitering and prowling, possession of marijuana, passing forged instruments, petit theft, and making false **reports**. *Id.* The record shows that the applicant was convicted of loitering and prowling as well as possession of marijuana. *Id.* The applicant failed to submit requested police reports or court dispositions for this **arrest**. On November 28, 1985 the applicant was **arrested** by the Ventura, California Sheriff's Department for violation of a promise to appear, petty theft, and **carrying** a loaded **firearm** in public. *Id.* Although no police reports or court dispositions were submitted, the record notes that the applicant was convicted and sentenced to two days in jail for theft of personal **property**. *Id.* On May 14, 1986 the applicant was **arrested** by the Ventura, California **Sheriff's** Department for possession of **cocaine/heroin/LSD**. *Id.* The applicant failed to submit requested police reports or court dispositions for this arrest. On November 15, 1988 the applicant was arrested by the **Hialeah**, Florida Police **Department** for marijuana possession, probation violation, larceny, and passing a forged **instrument**. *Id.* The applicant failed to submit requested police reports or court dispositions for this arrest. On August 29, 1992 the applicant was arrested for disorderly intoxication and disturbing the peace in Miami, Florida. *Id.* The applicant failed to submit requested police reports or court dispositions for this arrest. On November 3, 1995 the applicant was **arrested** for probation violation in **reference** to leaving the scene of an accident with injuries in Miami, Florida. *Id.* The applicant failed to submit requested police reports or court dispositions for this arrest.

On notice of **certification**, the applicant was offered an opportunity to submit evidence in opposition to the **District** Director's findings. The record does not include any brief or written statement, additional or evidentiary material from the applicant. 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. As the applicant has failed to submit the requested police reports and court dispositions concerning the charges brought against him, which may preclude his eligibility under Section I of the eAA of November 2, 1966, the applicant has not met his burden of proof in this proceeding. The applicant has, therefore, failed to establish that he is eligible for adjustment of status to permanent residence, pursuant to Section 1 of the CAA of November 2, 1966.

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

ORDER: The District Director's decision is affirmed.