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FILE: Office: MIAMI, FL (ORLANDO) Date: **APR 10 2008**

IN RE: Applicant: [REDACTED]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Interim District Director, Miami, Florida who certified her decision to the Administrative Appeals Office (AAO) for review. The Interim 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 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 Interim District 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). The Interim District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See Interim District Director's Decision*, dated May 8, 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 January 28, 1982 the applicant was arrested for possession of gambling records in New York. *FBI Report*. The applicant failed to provide the requested arrest records and court documents for this charge. On June 26, 1984 the applicant was convicted of Criminal Possession of a Weapon in the Third Degree under New York PL 265.02 04 DF (Handgun). *Certificate of Disposition Indictment, Supreme Court of the State of New York, New York County*, dated September 20, 2006. On August 23, 1984 the applicant received a sentence of imprisonment of one year for this crime. *Id.* On August 28, 1984 the applicant was arrested for murder in the second degree in New York and subsequently received a sentence of one year in prison. *FBI Report*. On June 28, 1985 the applicant pled guilty in New York to Possession of Gambling Records under PG 225.15. *Certificate of Disposition, Criminal Court of the City of New York, County of Bronx*, dated October 11, 2006. On January 29, 1986, the applicant pled guilty in New York to Promoting Gambling under PG 225.05. *Id.* On March 25, 1986, the applicant again pled guilty in New York to Promoting Gambling under PG 225.05. *Id.* On June 9, 1987, the applicant was arrested in New York for the criminal sale of a narcotic drug, resisting arrest, loitering, and unlawful use of a controlled substance. *FBI Report*. The applicant failed to provide the requested arrest records and court documents for these charges. On November 15, 1989 the applicant was arrested in Florida for Driving Under the Influence. *FBI Record*. The applicant failed to provide the requested arrest records and court documents for this charge. On September 24, 1994 the applicant was arrested in Florida for Driving Under the Influence. *Id.* The applicant failed to provide the requested arrest records and court documents for this charge. On December 21, 1994 the applicant pled guilty in New York to Theft of Services under PG 165.15 and received a sentence of one year conditional discharge. *Certificate of Disposition, Criminal Court of the City of New York, County of New York*, dated August 24, 2006. On November 12, 1997 the applicant was arrested in Florida on a Failure to Appear on a Driving Under the Influence charge from November 15, 1989. *FBI and Citizenship and Immigration Services (CIS) Records*. The applicant failed to provide the requested arrest records and court documents for this charge. On June 9, 2003 the applicant pled nolo contendere under Florida Statute 893.13(6)(B) for Possession of 20 Grams or Less of Cannabis and was ordered to serve one day in jail and 180 days of probation. *Judgment, County Court of the Ninth Judicial Circuit, in and for Orange County, Florida*. On September 17, 2002 the applicant was arrested in Florida for probation violation. *CIS Record*. The applicant failed to provide the requested arrest records and court documents for this charge. On April 9, 2003 the applicant

pled nolo contendere under Florida Statute 800.03, Exposure of Sexual Organs and under Florida Statute 798.02, Lewd and Lascivious Behavior and received a sentence of 16 days in jail. *Court Minutes/Order, County Court of the Ninth Judicial Circuit, in and for Orange County, Florida*. On April 14, 2003 the applicant was arrested in Florida for violating probation. *FBI Report*. The applicant failed to provide the requested arrest records and court documents for this charge. On July 24, 2003 the applicant was arrested in Florida for contempt of court by not answering a summons to appear. *Id.* The applicant failed to provide the requested arrest records and court documents for this charge. On May 24, 2004 the applicant was arrested in Florida for Driving Under the Influence. *Id.* The applicant failed to provide the requested arrest records and court documents for this charge. On June 30, 2004 the applicant was arrested in Florida for Driving Under the Influence. *Id.* The applicant failed to provide the requested arrest records and court documents for this charge.

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. Therefore, the AAO finds that, based on his convictions for murder and theft of service, the applicant is inadmissible to the United States under the provisions of section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude. Based on the applicant's Form I-485, Application to Register Permanent Resident or Adjust Status, the applicant has a spouse and several children who are United States citizens and may be eligible for a waiver of this ground of inadmissibility based on these qualifying relationships.

The AAO notes, however, that the applicant was arrested in 1987 in relation to a controlled substance offense for which no waiver is available and that he has failed to submit the arrest report and court disposition for this charge, despite CIS' July 12, 2004 request for the arrest records and court dispositions for all of the charges brought against the applicant. See Request for Evidence, dated July 12, 2004. As the applicant has not provided the evidence necessary to establish that he was not convicted on the charge of criminal sale of a narcotic drug, he has failed to prove that he is not subject to section 212(a)(2)(C) of the Act, which bars the admission of controlled substance traffickers to the United States and for which there is no waiver of inadmissibility available. Accordingly, the applicant has not met his burden of showing that he is eligible for the benefit sought.

The applicant has not demonstrated 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 Interim 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 Interim District Director's decision is affirmed.