U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

A2

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: FEB 07 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:

[redacted]

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 Director, Southern Service Center (now Texas Service Center), who certified his decision to the Administrative Appeals Unit (now, the Administrative Appeals Office (AAO)) for review on June 3, 1994. The Director's decision is affirmed.

The applicant is a native and citizen of Cuba who filed an 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 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 Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See Director's Decision*, dated June 3, 1994.

According to the record, the applicant filed a Form I-485, Application to Adjust Status to Lawful Permanent Resident with the Immigration and Naturalization Service (now, Citizenship and Immigration Services (CIS)) on September 17, 1993. *See Form I-485*. CIS records indicate that the applicant filed another Form I-485 on May 1, 2006 and a Form I-601, Application for Waiver of Grounds of Excludability on October 18, 2006. The AAO observes that the Forms I-485 and I-601 filed in 2006 are not included in the record of proceeding. The AAO notes counsel's assertions that these 2006 filings are at the Miami District Office. The AAO has jurisdiction only over the Form I-485 filed in 1993, as the denial of this application has been certified to the AAO. The 2006 Form I-485 will not be addressed.

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 -
>
> > (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 reveals that on March 25, 1985 the applicant was convicted of Attempted Armed Robbery, With a Firearm, to-wit: A Pistol in violation of Florida Statutes 777.04 and 812.13. *Judgment, Circuit Court Eleventh Judicial Circuit, in and for Dade County, Florida*, dated April 18, 1985. The applicant was placed on probation for three years. *Id.*

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

The AAO notes that an application for admission or adjustment is a "continuing" application, adjudicated based on the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). The date of decision is the date of the final decision on the application for adjustment of status, which, in this case, must await the AAO's findings in the present matter. Therefore, the Form I-485 in this matter is still pending.

As the applicant has been convicted of a crime 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 applicant's 1985 conviction is his only conviction (*FBI printout report*, dated May 24, 2006), thus the criminal activities for which the applicant is inadmissible occurred over 15 years ago. The AAO notes that in cases where the activities that render the applicant inadmissible occurred more than 15 years prior to the date of the applicant's application for a visa, admission or adjustment of status, the applicant may establish eligibility for a waiver by showing that he is not a national security risk and that he has been rehabilitated. As the applicant had not submitted a Form I-601 waiver in 1994, the AAO only has jurisdiction over the certified Form I-485 and cannot make a finding as to whether the applicant is not a national security risk and has been rehabilitated. As such, the AAO affirms the Director's finding that the applicant is inadmissible. The AAO notes that this finding is without prejudice, as the applicant has filed a second Form I-485 and Form I-601 waiver in 2006 that remains pending with the Miami District Office.

ORDER: The Director's decision is affirmed. The AAO notes that this finding is without prejudice, as the applicant has a Forms I-485 and I-601 applications pending with the Miami District Office.