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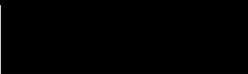
U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW ORLEANS, LA

Date:

FEB 28 2008

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 Field Office Director, New Orleans, Louisiana who certified his decision to the Administrative Appeals Office (AAO) for review. The Field Office Director's decision will be withdrawn and the application will be approved.

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 Field Office Director found the applicant inadmissible to the United States because he failed to provide copies of his arrest records and dispositions for his criminal offenses. The Field Office Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See Field Office Director's Decision*, dated November 26, 2007.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the Field Office Director's findings. Counsel for the applicant submitted a statement, arrest records, letters from the District Attorney's office, 24th Judicial District, State of Louisiana, and a court disposition on behalf of the applicant.

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.

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 reveals that on October 26, 1988 the applicant was arrested for simple battery under Section 35 of Title 14 of the Louisiana Code of Criminal Procedure. *See incident report.* According to a review of the applicant’s criminal history issued by the Harry Lee Sheriff’s Office, the applicant, on June 26, 1989, was arrested for Fugitive/Simple Battery. *See Review of Criminal History, Harry Lee Sheriff,* dated October 27, 2004. According to counsel, the applicant was not arrested on October 26, 1988 when he was charged with simple battery. *Attorney’s statement.* Rather, he received a summons to appear in court, which he disregarded. *Id.; See Also incident report noting that the applicant received a summons.* As a result of his failure to appear, the judge, on June 26, 1989, issued a fugitive warrant for the applicant’s arrest. *Id.* On August 1, 1989, the applicant pled guilty to simple battery and the case was closed. *See Court Document, Mayor’s Court, City of Kenner.* The applicant was arrested on January 2, 1995 for simple battery and the charge was subsequently dismissed. *See Statement, Assistant District Attorney,* dated August 8, 2005. The applicant was arrested on September 25, 1995 for simple battery and the charge was subsequently dismissed. *See Statement, Assistant District Attorney,* dated August 8, 2005. The applicant was arrested on April 13, 2002 for simple battery, aggravated assault and simple criminal damage to property and all of these charges were subsequently dismissed. *See Court Document, First Parish Court, Jefferson Parish, State of Louisiana.*

Having reviewed the record, the AAO finds that the applicant’s 1995 and 2002 arrests are not convictions for immigration purposes, as all of the charges were dropped. The applicant was convicted on August 1, 1989 for simple battery. However, simple battery is not a crime involving moral turpitude. *See Matter of Garcia-*

Hernandez, 23 I&N Dec. 590 (BIA 2003). As such, the applicant is not inadmissible pursuant to section 212(a)(2)(i)(I) of the Act.

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 met his burden of proof. The applicant is a Cuban citizen, he has been inspected and admitted into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year. Therefore, he is eligible to apply for adjustment of status under the Cuban Adjustment Act. As there is nothing in the record to show that the applicant is inadmissible and the AAO finds that the applicant warrants a favorable exercise of discretion, the application for adjustment of status will be approved.

ORDER: The Director's decision is withdrawn. The application to adjust status to lawful permanent resident under the Cuban Adjustment Act is approved.