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



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

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FILE:

Office: NEW YORK, NY

Date: SEP 11 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:

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, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, New York, New York 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 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2). 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 17, 2006.

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 May 6, 1982 the applicant was arrested for homicide-willful kill-weapon in the first degree. *FBI printout report*. On April 22, 1983 adjudication was withheld and the applicant received a sentence of confinement of 11 months and 29 days and was placed on probation for five years. *Id.* October 18, 1988 the applicant was arrested for cocaine possession of 4 grams and narcotics equipment possession with cocaine residue pipe. He was found guilty on February 13, 1989 and sentenced to six months in jail. *Id.* On March 27, 1988 the applicant was arrested for assault in the third degree. *Id.* He was convicted upon a plea of guilty and placed on probation for three years. *Id.*

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. In response, the applicant submitted a written statement in which he claims that the 1982 homicide conviction cited by the district director does not relate to him, but to his brother. Applicant's Statement, dated October 28, 2006. The applicant further states that his own conviction for assault resulted in probation and that he finished his probation without any problem. The applicant further asserts that it was not he, but a companion who was in possession of the drug paraphernalia that resulted in his 1988 arrest for possession of cocaine and narcotics equipment. He states that he stopped using drugs in 1988.

While the AAO notes the applicant's claims with regard to his criminal history, it finds that his criminal record, as established by a fingerprint check performed by the Federal Bureau of Investigation, includes convictions for conspiracy to commit homicide-willful kill-weapon in the first degree, and possession of cocaine and narcotics equipment, pipe with cocaine residue. While the applicant's conviction for conspiracy to commit homicide may be waived under section 212(h) of the Act, his controlled substance conviction also renders him inadmissible under the provisions of section 212(a)(2)(A)(i)(II) and no waiver is available.

The applicant is ineligible 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. 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 District Director's decision is affirmed.