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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **JUL 02 2008**

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant is a native and citizen of Cuba who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for having committed a crime involving moral turpitude. The applicant sought a waiver of inadmissibility under section 212(h) of the Act, which the director denied, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the Director*, dated April 20, 2006.

The AAO will first address the finding of inadmissibility.

Section 212(a)(2) of the Act states in pertinent part, that:

(A)(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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

“[M]oral turpitude refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.” *Padilla v. Gonzales*, 397 F.3d 1016, 1019-21 (7th Cir. 2005), (quoting *In re Ajami*, 22 I. & N. Dec. 949, 950 (BIA 1999)).

The record reflects that the applicant pled *nolo contendere* to possession of forged notes or bills in November 2000, which counsel, on appeal, concedes is a crime involving moral turpitude. Thus, the AAO finds that the applicant is inadmissible under section 212(a)(2)

The Form I-485, Application to Register Permanent Resident or Adjust Status, shows the applicant as seeking to adjust to permanent resident status as a Cuban. To overcome inadmissibility under section 212(a)(2), the applicant submitted the I-602, Application by Refugee for Waiver of Grounds of Excludability, along with the appeal. However, because the Form I-485 indicates that the applicant is applying for adjustment to permanent resident status under Section 1 of the Cuban Adjustment Act (CAA), the Form I-601, not the Form I-602, is the proper waiver application.

Counsel on appeal states that the applicant now wishes to adjust to permanent residency as an asylee, rather than under the CAA. Counsel claims that an AAO decision found that an applicant that was initially admitted as a refugee and was seeking adjustment under the CAA could file an I-602 waiver. The record here, however, does not contain that AAO decision. The AAO notes that unpublished AAO decisions are not binding and further, each case must be adjudicated on its merits. This contention is therefore, not persuasive.

The applicant submitted the I-602 on appeal and indicates that he now wishes to apply for adjustment of status as an asylee. If he wishes to do that, the applicant will need to submit a new Form I-485 indicating that he seeks adjustment to permanent resident status as an asylee.

Based upon the aforementioned discussion, the I-602 is denied.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.