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U.S. Citizenship
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Services

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FILE:

Office: NEWARK, NJ

Date: DEC 20 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Newark, New Jersey who certified the 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, 2005.

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.

(C) Controlled substance traffickers.-

Any alien who the consular officer or the Attorney General knows or has reason 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 February 28, 1992 the applicant was convicted under section 2C:35-7 of the New Jersey Statute for Possession of a Controlled Dangerous Substance with Intent to Distribute within 1000 Feet of School Property. *See Judgment of Conviction, New Jersey Superior Court, Hudson County*, dated June 19, 1992. The controlled dangerous substance involved was cocaine. *FBI printout report*. The applicant was sentenced to 364 days in a Hudson County Jail work release program and probation for a period of three years. *See Judgment of Conviction, New Jersey Superior Court, Hudson County*, dated June 19, 1992. The applicant was also charged with Conspiracy, Possession of a Controlled Dangerous Substance, and Possession of a Controlled Dangerous Substance with Intent to Distribute. However, these charges were dismissed. *Id.*

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.

The AAO observes that the District Director incorrectly stated that the applicant was convicted of Possession of a Controlled Dangerous Substance within 1000 Feet of a School. *See District Director's Decision*, dated October 17, 2005. As previously noted, the applicant was convicted of Possession of a Controlled Dangerous Substance *with Intent to Distribute* (emphasis added) within 1000 Feet of School Property. *See Judgment of Conviction, New Jersey Superior Court, Hudson County*, dated June 19, 1992. Based on his controlled substance conviction, the AAO finds that the applicant is subject to the provisions of sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act. In that his conviction was for other than possession of 30 or fewer grams of marijuana, no waiver is available to the applicant under section 212(h) of the Act. The applicant is, therefore, ineligible for adjustment of status to permanent residence, pursuant to Section 1 of the CAA of November 2, 1966. As the applicant is statutorily inadmissible to the United States on the basis of his controlled substance conviction and no waiver of that inadmissibility is available, the AAO will not consider whether his conviction is a crime involving moral turpitude that would also render him inadmissible to the United States.

An applicant must demonstrate by a preponderance of the evidence that he or she 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. The decision of the District Director to deny the application will be affirmed.

ORDER: The District Director's decision is affirmed.