U.S. Department of Homeland Security
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Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

AL

FILE: [redacted] Office: ORLANDO, FL Date: APR 03 2008

IN RE: [redacted]

PETITION: 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: On November 24, 2004, the District Director, Miami, Florida denied the application and certified his decision to the Administrative Appeals Office (AAO). On November 7, 2005, the AAO remanded the matter to the District Director to allow the applicant the opportunity to submit a Form I-601, Application for Waiver of Grounds of Inadmissibility, under section 212(h) of the Act. On May 8, 2007, the Interim District Director, Orlando, Florida denied the Form I-601 filed by the applicant. On May 10, 2007, the Interim District Director issued a second denial of the applicant's adjustment application and again certified the decision to the AAO for review. The Interim 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 Interim District Director found the applicant inadmissible to the United States because he falls within the purview of sections 212(a)(2)(A)(i)(I) and 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i)(I) and 1182(a)(2)(B). The Interim Field Office Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See Interim District Director's Decision,* dated May 10, 2007.

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.

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 reveals that on December 8, 1980, in Washington, D.C. the applicant was charged with grand larceny, which was later reduced to petit larceny. *FBI printout report.* The disposition for this arrest is unclear. On January 22, 1981, the applicant was arrested and subsequently convicted of credit card theft and credit card fraud. He was sentenced to three years imprisonment concurrent on each count. *Id.; See also criminal records, Circuit Court for the City of Alexandria, Virginia*, dated October 13, 1981. On October 15, 1981, in Fairfax, Virginia, the applicant was convicted of burglary and sentenced to three years imprisonment. *FBI printout report.* On July 9, 1983, in Warm Springs, Virginia, the applicant was arrested for brandishing a firearm. *Id.* The disposition for this arrest is unclear. On August 30, 1983, in Fairfax County, Virginia, the applicant was arrested and subsequently convicted on two felony counts of burglary. *Id.* The applicant and sentenced to one year of imprisonment. *Id.* On September 11, 1984, in Alexandria, Virginia, the applicant was arrested for robbery. *Id.* The disposition for this arrest is unclear. On April 4, 1985, in Richmond, Virginia, the applicant was arrested and subsequently convicted of robbery. *Id.* The applicant was sentenced to seven years imprisonment. On January 23, 1995, in Miami, Florida, the applicant was convicted of passport fraud. *Id.; See also criminal records, United States District Court, Middle District of Florida, Orlando Division*, dated June 28, 1995. The applicant was sentenced to five years probation. *Id.* On July 30, 1999, the applicant was charged with violation of probation. *FBI printout report.* The applicant was sentenced to three months imprisonment. *Id.* On December 3, 1999, the applicant's supervised release status was revoked and he was sentenced to eight months imprisonment. *Id.* The AAO also observes that on July 13, 2000, the applicant was ordered removed from the United States by an immigration judge. *See Order of the Immigration Judge, Executive Office for Immigration Review, Bradenton, Florida*, dated July 13, 2000.

In its November 7, 2005 decision, the AAO reviewed the above criminal history and also found the applicant to be inadmissible to the United States under sections 212(a)(2)(A)(i)(I) and 212(a)(2)(B) of the Act. On July 28, 2006, the applicant filed the Form I-601 seeking a waiver of these inadmissibilities under section 212(h) of the Act. The Interim District Director denied the Form I-601 on May 8, 2007 and the AAO has rejected the applicant's appeal of the Interim District Director's denial as untimely filed in a separate proceeding. Accordingly, the applicant is not eligible for a waiver under section 212(h) of the Act.

As the applicant is inadmissible to the United States under sections 212(a)(A)(i)(I) and 212(a)(2)(B) of the Act, he is ineligible for adjustment of status to permanent residence, pursuant to section 1 of the CAA of November 2, 1966. The decision of the Interim District Director 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 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 matter.

ORDER: The Interim District Director's decision is affirmed.

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