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

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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: ORLANDO, FL Date: FEB 28 2008

IN RE: Applicant: [redacted]

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 Acting Field Office Director, Orlando, Florida who certified her decision to the Administrative Appeals Office (AAO) for review. The Acting Field Office 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 Acting Field Office 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 Acting Field Office Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See Acting Field Office Director's Decision* dated September 27, 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.
>
> (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—

(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 29, 2001 the applicant pled guilty to Battery of a Law Enforcement Officer under Section 784.07(2)(b) of the Florida State Statutes. *See criminal records, Circuit Court of the Ninth Judicial Circuit, Orange County, Florida.* The applicant was sentenced to serve 90 days in jail. *Id.* On May 29, 2001 the applicant pled guilty to Resisting an Officer with Violence under Section 843.01 of the Florida State Statutes. *Id.* The applicant was ordered to serve a concurrent sentence of 90 days in jail. *Id.* On May 29, 2001 the applicant pled guilty to Possession of Cocaine under Section 893.13(6)(a) of the Florida State Statutes. *Id.* The applicant was ordered to serve a concurrent sentence of 90 days in jail. *Id.* On May 29, 2001 the applicant pled guilty to Disorderly Intoxication under Section 856.011 of the Florida State Statutes. *Id.* The applicant was ordered to serve a concurrent sentence of 60 days in jail. *Id.*

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the Acting Field Office Director's findings. The applicant did not submit any additional brief or written statement. Based on his controlled substance conviction, the applicant is subject to the provisions of sections 212(a)(2)(A)(i)(II) of the Act. In that a waiver of inadmissibility under section 212(a)(2)(i)(II) of the Act is available only to individuals convicted of simple possession of 30 grams or less of marijuana, the applicant's conviction for possession of cocaine is a permanent bar to admission. The applicant is, therefore, ineligible for adjustment of status to permanent residence, pursuant to Section 1 of the CAA of November 2, 1966.

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. The decision of the Acting Field Office Director to deny the application will be affirmed.

ORDER: The Acting Field Office Director's decision is affirmed.