identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

A2

FILE: [redacted] Office: NEW ORLEANS FIELD OFFICE Date: **AUG 04 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, New Orleans, Louisiana, who certified his decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The application will be denied.

The applicant is a native and citizen of Cuba who filed this 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.

A review of the record reveals the following facts and procedural history: The applicant first entered the United States in May 1980 during the Mariel Boatlift. He applied for asylum and was interviewed regarding his claim on May 28, 1980. On August 31, 1988, the applicant was convicted of: one count of knowingly, intentionally and unlawfully distributing approximately one-half ounce of cocaine hydrochloride, a Schedule II narcotic drug controlled substance in violation of Title 21, United States Code Section 841(a)(1) on or about April 12, 1988; one count of knowingly, intentionally and unlawfully distributing approximately one ounce of cocaine hydrochloride, a Schedule II narcotic drug controlled substance in violation of Title 21, United States Code Section 841(a)(1) and in violation of Title 18, United States Code Section 2 with another individual on or about April 27, 1988; and one count of knowingly, intentionally combine, conspire, confederate and agree with one other named person and other unknown persons to distribute approximately one ounce of cocaine hydrochloride, a Schedule II narcotic drug controlled substance in violation of Title 21, United States Code Section 841(a)(1) and in violation of Title 21, United States Code Section 846. The applicant was sentenced to 21 months in prison on each count to be served concurrently, an additional three years of supervised release on count one and two and five years of supervised release on count three also to run concurrently, and an assessment of $50 for each count for a total assessment of $150. The applicant filed the instant Form I-485, Application to Register Permanent Residence or Adjust Status, on May 15, 2008

In a May 12, 2009 decision, the director determined that the applicant was not eligible for adjustment of status because his criminal history made him inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II). The director denied the application and certified his decision to the AAO for review. The director informed the applicant that he had 30 days to supplement the record with any evidence that he wished the AAO to consider. The applicant submitted a personal statement dated June 2, 2009. The applicant stated: "I have been a[n] integral part of the society as a new Ordain[ed] Minister of the Hispanic Church named Ministerios Paloma Blanca [where] my testimony has been impeccable for the last two years, I am married to a US Citizen and I have children born to our marriage in the United States." The applicant asserts that these factors give him the right to be awarded legal resident status.

Section 212(a)(2)(A) of the Immigration and Nationality Act (INA) states, in pertinent part:

> (i) In general.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> * * *
>
> (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.

As the director determined the applicant's criminal history makes him inadmissible. The applicant's conviction on three counts related to cocaine trafficking makes him inadmissible under section 212(a)(2)(A)(i)(II) of the INA (controlled substance violation). There is no waiver of inadmissibility available to the applicant, thus, the factors referenced by the applicant on certification are inapplicable to this matter. Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. The applicant has not met his burden. Accordingly, the AAO affirms the decision of the director to deny the applicant's application to adjust status pursuant to section 1 of the CAA.

ORDER: The director's decision is affirmed. The application is denied.