U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEW ORLEANS, LOUISIANA Date: MAR 05 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:

[redacted]

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 (FOD), 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 on June 24, 1980 during the Mariel Boatlift. He again attempted to enter the United States on December 27, 1985 by making a false claim to citizenship. He presented to Service officers a U.S. birth certificate in the name of [redacted] and insisted that he was a U.S. citizen. The applicant did not reveal his true identity until he was put under oath by Service officers. The applicant was placed in exclusion proceedings and was ordered excluded by an immigration judge on June 16, 1987. His order was not enforced, however, because he had submitted an application to adjust his status under the legalization program. The applicant submitted the instant Form I-485 on May 29, 2000 seeking to adjust his status under section 1 of the CAA.

During his exclusion proceedings, the applicant admitted to his involvement in the burning of two warehouses in Cuba in 1975. He was charged with sabotage and imprisoned for these acts. On October 6, 1993, the applicant pled guilty to possession with intent to distribute marijuana in violation of LA - R.S. 40:966(A). The applicant was given a suspended sentence of five years of hard labor, three years of active probation, and ordered to pay a fine of $500.00 including court costs. In June 2000, the applicant was arrested for a second time for Driving While Intoxicated (DWI). The applicant pled guilty in May 2001 and was sentenced to pay $385.50 in court costs and $300.00 in fines, was ordered to perform 32 hours of community service, and had his license suspended for 30 days. On June 17, 2007, the applicant was arrested for Battery/Domestic Abuse; however, no disposition is included in the record regarding the outcome of this arrest.

In a May 14, 2008 decision, the director determined that the applicant was not eligible for adjustment of status because his criminal history and his false claim to U.S. citizenship made him inadmissible to the United States. 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. Neither the applicant nor his attorney submitted additional evidence for consideration.

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

> (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-
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> (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.

The applicant's October 1993 conviction of possession with intent to distribute marijuana makes him inadmissible under section 212(a)(2)(A)(i)(II) of the INA. As the applicant has not disputed the director's findings, and as the applicant is inadmissible based upon this act alone, the AAO will not discuss the other criminal issues present in the applicant's record. 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.