

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



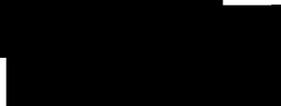
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

72



FILE:



Office: ORLANDO FIELD OFFICE

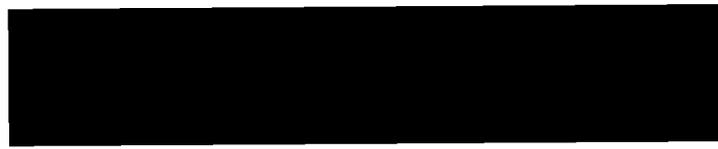
Date:

MAR 12 2010

MSC 06 112 12400

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.

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Orlando, Florida, who certified her decision to the Administrative Appeals Office (AAO) for review. The field office 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: On the Form I-485, the applicant indicates that he last arrived in the United States on December 6, 1995, and the record includes a photocopy of the applicant's Form I-94 indicating the applicant was paroled into the United States on December 6, 1995 in the public interest. The Form I-485 that is the subject of this certification was filed on January 16, 2006. The record includes evidence of the applicant's arrests and convictions relating to drug possession including:

An arrest on a charge of criminal possession of marijuana, PL 221.10, on July 3, 2002 and upon a plea of guilty of a violation of PG 240.20, disorderly conduct, an indeterminate sentence imposed;

An arrest on a charge of criminal possession of marijuana, PL 221.10 on August 15, 2002 and upon a plea of guilty of a violation of PG 240.20, disorderly conduct, a sentence of a one-year conditional discharge and three days of community service imposed on August 16, 2002;

An arrest by the New York City Police Department on a charge of criminal possession of marijuana, PL 221.10 01, on February 7, 2003 and a conviction upon a plea of guilty on the same charge on February 8, 2003, a sentence of five days and a six-month suspension of license imposed;

An arrest by the New York City Police Department on a charge of criminal possession of marijuana, PL 221.10 01 on March 4, 2003 and a conviction upon a plea of guilty on the same charge on March 5, 2003, a sentence of seven days imposed.

In a July 22, 2009 decision, the field office 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)(I) and (II) of the Immigration and Nationality Act (the Act). The field office director denied the application and certified her decision to the AAO for review. The

field office 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 did not provide further information. Thus, the record is considered complete.

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-
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
 - (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 AAO finds that the applicant's convictions make him inadmissible under section 212(a)(2)(A)(i)(II) of the INA (controlled substance violation). There is no exception for a conviction of a violation under section 212(a)(2)(A)(i)(II). There is no waiver of inadmissibility available to the applicant. 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.