

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



A2

DATE: DEC 05 2012

Office: NEWARK, NJ

FILE: [REDACTED]

IN RE: [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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in cursive script that reads "Ron Rosenberg".

Ron Rosenberg *for*
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the application for adjustment of status and then certified the decision to the Administrative Appeals Office (AAO) for review. The decision of the director will be affirmed.

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 director denied the application on August 15, 2012, because the applicant had been convicted of one or more felonies. The director determined that the applicant was inadmissible under Section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), for having been convicted of a crime involving a controlled substance, to wit: possession of cocaine. As noted by the director, a waiver of grounds of inadmissibility under section 212(h) of the Act pertaining to possession of a controlled substance does not apply to possession of cocaine for which the applicant was convicted. In addition, the director determined that the applicant was inadmissible for having been convicted of a crime involving moral turpitude (CIMT) under section 212(a)(2)(A)(i)(I) of the Act. The director noted that the court disposition in the record reflects that on July 13, 1998, the applicant pled guilty to attempted lewd and lascivious assault on a child in violation of Florida Statute 800.4; the applicant was sentenced to three years of probation and he was required to register as a sex offender. The director certified her decision to the AAO for review and provided the applicant with a period of 30 days to supplement the record with a brief or any additional evidence. As of this date, the AAO has not received any supplemental materials and considers the record complete.

As the applicant has not presented any evidence or arguments in rebuttal to establish that the director's decision was erroneous, the AAO shall not disturb the decision to deny the application.

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 failed to meet his burden of proof. Therefore, he is ineligible to adjust his status under the Cuban Adjustment Act.

ORDER: The decision of the field office director is affirmed. The application for adjustment of status is denied.