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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUN 2 6 2013 Office: DALLAS (IRVING)

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 OBLIGOR: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Irving, Texas, (Dallas Office) denied the application to adjust status and certified his decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The application remains 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), Pub. Law No. 89-732 (Nov. 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.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

> (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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h)(2) of the Act provides in pertinent part:

> No waiver [of inadmissibility under section 212(a)(2)(A)(i)(I) due to a crime involving moral turpitude] shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder.... No court shall have jurisdiction to review a decision of the Attorney General [now the Secretary of Homeland Security, "Secretary"] to grant or deny a waiver under this subsection.

The record reflects that the applicant first entered the United States without inspection in 1978, and according to Service records, married his first United States Citizen spouse on August 15, 1984, in [redacted] Texas. The applicant was subsequently admitted as an IR1 on August 22, 1985. That marriage ended in divorce on June 4, 1999.

On or about August 16, 1999, the applicant filed a Declaration and Registration of Informal Marriage, in [redacted] Texas, where he married [redacted], a United States Citizen. On June 1, 2006, the applicant was detained and placed in proceedings before an Immigration Judge. On July 20, 2006, the applicant's spouse filed a Form I-130 on his behalf. The Immigration

Judge terminated proceedings on August 28, 2006, and the applicant filed a Form I-485 on September 8, 2006.

The applicant provided copies of a statement from the Social Security Administration for earnings starting in 1985; proof of child support payments for his elder son; proof of ownership of his home; birth certificates for his three children, born on January 27, 1992, July 1, 2004 and March 2, 1985, respectively; proof of marriage to ; a certificate showing that was naturalized as a United States citizen on October 29, 2003; proof that his mother is a legal permanent resident; his brother's certificate of naturalization; and, various tax returns and affidavits from family members, in-laws and friends.

The director found that the applicant was arrested on February 5, 1989 and subsequently indicted in Texas on February 16, 1989, for felony indecency with a child. The applicant entered a plea of guilty in the 183rd District Court of Harris County, Texas and was placed on probation for eight years, assessed a fine of $1,000, and ordered to undergo an alcohol/drug evaluation, attend an approved treatment program and receive counseling in a sex offender program. The director noted that Service records reflect that the victim was the applicant's ten year old step-daughter, with whom he enjoyed a position of trust and care.

The record of proceeding also reflects the following arrests and convictions:

1. DWI in Texas on September 3, 1983;
2. DWI in , Texas on July 26, 1985 – 2 years' probation, $400 fine, 60 days jail;
3. DWI 2nd in Texas on February 21, 1989 -$600 fine, 15 days jail;
4. DWI in Texas on June 30, 1989 - $1000 fine, 90 days jail;
5. DWI in Texas on June 30, 1989 - $500 fine, 90 days jail;
6. Resisting Arrest on August 24, 1989 in , Texas – 15 days jail;
7. DWI in Texas on March 15, 2005 – 2 years' probation;
8. DWI Felony on September 28, 2008, convicted November 18, 2009 - $1,500 fine, ten years' probation.

Adjustment of status is a matter of administrative grace, not mere statutory eligibility. *Matter of Marques*, 16 I. & N. Dec. 314, 315 (BIA 1977). The applicant has the burden of demonstrating that discretion should be exercised in his favor. *Matter of Patel*, 17 I. & N. Dec. 597, 601 (BIA 1980); *see also Matter of Leung*, 16 I. & N. Dec. 12 (BIA 1976), *Matter of Arai*, 13 I. & N. Dec. 494 (BIA 1970).

On February 28, 2012, the director denied the Form I-485. The director, in considering all the facts, including but not limited to the nature of the applicant's crime involving a child to whom he owned a duty of trust, as well as his long history of arrests involving alcohol abuse, the director determined that the applicant did not merit, as a matter of discretion, adjustment of status in the United States. The director noted that the applicant had been on probation for a total of fourteen years during the approximately 26 years he has been in the United States, he has been in

jail for an additional 270 days, and at the time of the director's decision, February 28, 2012, the applicant still had a remaining seven and one-half years of probation. The director certified his decision to the AAO for review and notified the applicant that he had 30 days to supplement the record with any evidence that he wished the AAO to consider.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO concurs with the director's finding that the applicant does not warrant a favorable exercise of discretion based on the heinous nature of his crime involving a child to whom he owed a duty of trust, as well as his criminal record which includes a long history of arrests, and a DWI Felony conviction on November 18, 2009. In proceedings for adjustment of status under section 1 of the CAA the burden of establishing that the application merits approval remains with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the field office director's decision to deny the application as a matter of discretion will be affirmed.

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