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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: FEB 2 8 2014 Office: KENDALL FIELD OFFICE FILE: [redacted]

IN RE: Applicant [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Refugee Adjustment Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Kendall, Florida Field Office (the director) denied the Application to Register Permanent Resident or Adjust Status (Form I-485) and certified the decision to the Administrative Appeals Office (AAO) for review. The AAO affirmed the director's decision but subsequently reopened its prior decision on its own motion for consideration of additional evidence and entry of a new decision. The AAO and the director's prior decisions shall be withdrawn, and the matter remanded to the director for further processing of the Form I-485.

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 adjustment of status, concluding that the applicant's membership in the rendered him inadmissible to the United States pursuant to section 212(a)(3)(D) of the Immigration and Nationality Act (Act or INA), 8 U.S.C. § 1182(a)(3)(D).

Applicable Law

Section 1 of the CAA provides, in pertinent 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)(3)(D) of the Act sets forth the relevant ground of inadmissibility here as follows:

> Immigrant Membership in Totalitarian Party
>
> (i) In General - Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.
>
> (ii) Exception for Involuntary Membership - Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the [Secretary] when applying for admission) that the membership or affiliation is or was involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and whether necessary for such purposes.

* * *

In addition to the above statutory exceptions and as discussed below, longstanding case law provides that the immigration consequences flowing from membership in a communist or totalitarian party attach only if a "meaningful association" with that party existed. *See Gastelum-Quinones v. Kennedy*, 374 U.S. 469,471 (1963); *Rowoldt v. Perfetto,* 355 U.S. 115, 120 (1957); and *Galvan v. Press* 347 U.S. 522, 527-29 (1954); *see also Matter of Rusin*, 20 I&N Dec. 128, 130 (BIA 1989).

Relevant Facts and Procedural History

As the facts and procedural history were adequately explained in our prior decision, we shall repeat only certain facts as necessary here. The applicant, a native and citizen of Cuba, was first paroled into the United States on August 8, 2009. On September 26, 2010, he filed a Form I-485 to adjust his status under section 1 of the CAA, asserting, in part, that he was a member of the in Cuba from approximately March 1997 to August 2009. The director determined that the applicant was inadmissible to the United States under section 212(a)(3)(D)(i) of the Act based on this membership because he voluntarily joined and reaffirmed his membership in the on more than one occasion to further his education and career, as well as to obtain the opportunity to leave Cuba. Further, the director determined that the applicant's membership in the was more than nominal as he attended meetings and participated in volunteer work on behalf of that organization. Accordingly, the director concluded that the applicant was ineligible for an exception to his inadmissibility under section 212(a)(3)(D)(ii) of the Act, and certified the decision to the AAO for review.

On certification, the applicant asserted that he falls within the statutory exception to inadmissibility set forth in section 212(a)(3)(D)(ii) of the Act because the applicant's membership in the was not voluntary and was entered into solely for the purpose of obtaining employment and other essentials of living. Further, the applicant stated that even if his membership in the was voluntary, he had no meaningful association with the organization. The AAO affirmed the director's decision, concluding that the applicant's membership in the was voluntary and that he had a meaningful association with that organization such that the applicant was rendered inadmissible to the United States under section 212(a)(3)(D)(i) of the Act. The AAO subsequently reopened the matter *sua sponte*. The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ,* 381 F.3d 143,145 (3d Cir. 2004).

Analysis

The applicant has established that he had no meaningful association with the and, therefore, the inadmissibility ground at section 212(a)(3)(D)(i) of the Act does not apply to him.

In *Galvan,* the Supreme Court noted that Congress could not have intended the deportation of aliens who "accidentally, artificially, or unconsciously in appearance only" were members of the Communist Party, or where membership is so nominal as to not make him a "member" within the terms of the Act. 347 U.S. at 527-29. *See also Matter of Hajdu*, 16 I&N Dec. 497, 500 (BIA 1978) (noting that the *Galvan* Court recognized that the alien's participation in the Communist Party may have been so nominal as to make it unfair to attribute the consequences of "membership" to him).

In *Rowoldt*, the Court held that membership in the Communist Party mandates deportation only where there is "a substantial basis for finding that an alien committed himself to the [] Party in consciousness that he was 'joining an organization known as the Communist Party which operates as a distinct and active political organization.'" 355 U.S. at 120 (quoting *Galvan*, 347 U.S. at 528). The *Rowoldt* Court explained that the statutory exceptions were not to be construed narrowly and, further, enunciated a "meaningful association" requirement. 355 U.S. at 120; *see also Gastelum-Quinones*, 374 U.S. at 474, 476-77. Later, the Supreme Court interpreted "membership" as meaning "more than the mere voluntary listing of a person's name on Party roll." *Gastelum-Quinones*, 374 U.S. at 474 (citing *Scales v. United States*, 367 U.S. 203, 222 (1961). *See also Matter of Rusin*, 20 I&N at 131 (discussing the Supreme Court's "'meaningful association' requirement").

In our prior decision, we set forth the applicant's assertions regarding his membership, including his reasons for initially joining the as well as his reasons for confirming his membership on two other occasions. Throughout these proceedings, the applicant has maintained that his membership was in name only and passive in nature, so as to make it not "meaningful." The applicant has consistently maintained that he has never supported, agreed with, or promoted the Communist Party ideology and policies, and further asserted that he has never sought or held a leadership position in the According to the applicant, his membership activities were restricted to attending mandatory meetings and complying with mandatory volunteer work such as painting walls, janitorial work, and picking potatoes in fields.

The preponderance of the evidence establishes that the applicant had no meaningful association with the As such, he is not inadmissible under section 212(a)(3)(D)(i) of the Act for being a member of the Communist Party in Cuba.

Conclusion

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 established that he is not inadmissible under section 212(a)(3)(D)(i) of the Act.

ORDER: The AAO and the director's prior decisions are withdrawn. The matter is remanded to the director for entry of a new decision on the Form I-485, which if adverse to the applicant shall be certified to the AAO for review.