



U.S. Citizenship
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Services

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FILE: [REDACTED]

Office: ORLANDO, FLORIDA

Date: NOV 07 2005

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 PETITIONER: 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The District Director's decision will be withdrawn, and the matter will be remanded to him for further action.

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.

The District Director found the applicant inadmissible to the United States because he falls within the purview of sections 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude, 212(a)(2)(A)(i)(II), 8 U.S.C. § 1182(a)(2)(A)(i)(II) for a violation of any law or regulation of a State, the United States, or a foreign country relating to a controlled substance and 212(a)(2)(B), 8 U.S.C. §1182(a)(2)(B) for having been convicted of two or more offenses for which the aggregate sentences to confinement were 5 years or more. The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See District Director's Decision* dated November 24, 2004.

Section 212(a)(2) of the Act states in pertinent part, that:

(A)(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, 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.

. . . .

(B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

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

(h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B) . . . of subsection (a)(2) . . . if

. . . .

(1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

The record reflects the following criminal record:

December 8, 1980, in Washington, D.C. the applicant was charged with grand larceny, which was later reduced to petit larceny.

January 22, 1981, in Richmond, Virginia, the applicant was convicted of credit card theft and credit card fraud. He was sentenced to three years imprisonment concurrent on each count.

October 15, 1981, in Fairfax, Virginia, the applicant was convicted of burglary and sentenced to three years imprisonment.

July 9, 1983, in Warm Springs, Virginia, the applicant was arrested for brandishing a firearm. No disposition for this arrest is available.

August 30, 1983, in Fairfax County, Virginia, the applicant was convicted of 2 felony counts of burglary and sentenced to one-year imprisonment.

September 11, 1984, in Alexandria, Virginia, the applicant was arrested for robbery. No disposition is available of this charge.

April 4, 1985, in Richmond, Virginia, the applicant was convicted of robbery and sentenced to seven years imprisonment.

January 23, 1995, in Miami, Florida, the applicant was convicted of passport fraud and sentenced to five years probation. On July 30, 1999, the applicant was charged with violation of probation and was sentenced to three months imprisonment. On December 3, 1999, his supervised release status was revoked and the applicant was sentenced to eight months imprisonment.

Based on the above criminal history the AAO finds that the District Director erred in stating that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act. There is no evidence of a conviction related to a controlled substance. However, the applicant is clearly inadmissible pursuant to sections 212(a)(2)(A)(i)(I) and 212(a)(2)(B) of the of the Act.

As noted above section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. A review of the record of proceeding reveals that the applicant may have a U.S. citizen son and therefore he appears to have the family member required to file an Application for Waiver of Grounds of Inadmissibility (Form I-601) under section 212(h) of the Act. Accordingly the District Director's decision will be withdrawn and the record will be remanded to him in order to allow the applicant the opportunity to submit a Form I-601 under section 212(h) of the Act.

ORDER: The District Director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion.