U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

A2

[redacted]

FILE: [redacted] Office: NEWARK, NEW JERSEY Date: AUG 2 8 2006

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.

Ellen L. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Newark, New Jersey, who certified her decision to the Administrative Appeals Office (AAO) for review. The District Director's decision 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 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 section 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 a crime involving moral turpitude. *See District Director's Decision* dated July 18, 2005.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. No additional evidence has been entered into the record.

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 . . . 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) . . . 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 that on July 9, 1993, the applicant was arrested for battery for which a nolo contendre plea was entered. In addition, the applicant was arrested and convicted for lottery and gambling.

Based on his convictions the applicant is inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(I), 212(a)(2)(B) and 212(a)(2)(D)(iii) of the Act.

As stated 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 United States citizen or lawfully resident spouse, parent, son, or daughter.

On October 22, 2002, the applicant submitted an Application for Waiver of Grounds of Excludability (Form I-601), along with the appropriate fee in an attempt to explain how his deportation may result in extreme hardship to a qualifying relative. The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative if the waiver application were not granted. The application was denied accordingly. *See District Director's Decision* dated September 8, 2003. The applicant did not file an appeal but rather filed a Motion to Reopen and Reconsider which was denied on March 30, 2005. On March 15, 2005, the applicant filed an Application by Refugee for Waiver of Grounds of Excludability (Form I-602) which was denied on April 2, 2005, as improperly filed since he was neither an asylee nor a refugee.

As the applicant's application for a waiver of inadmissibility was not approved, he remains inadmissible under section 212(a)(2)(A)(i)(I) of the Act and, therefore, ineligible to adjust status under the CAA.

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. He has failed to meet that burden. The decision of the District Director to deny the application for adjustment of status will be affirmed.

ORDER: The District Director's decision is affirmed.