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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

Az

FILE:

[REDACTED]

Office: PHOENIX, AZ

Date: **MAY 11 2006**

IN RE:

[REDACTED]

APPLICATION:

Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act

ON BEHALF OF APPLICANT:

[REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Phoenix, AZ. The matter is now before the Administrative Appeals Office (AAO) on certification. The acting district director's decision will be affirmed and the application denied.

The record reflects that the applicant is a native and citizen of Cuba who was found to be ineligible to adjust his status to lawful permanent resident status pursuant to section 1 of the Cuban Adjustment Act based on the discretion of the acting district director. The applicant seeks a favorable exercise of discretion in order to reside in the United States.

The district director concluded that the unfavorable factors in the applicant's case outweigh the favorable factors, therefore, he is not eligible for a favorable exercise of discretion in this matter. *Decision of the Acting District Director*, at 2, dated January 27, 2006.

The AAO has not received a response to the notice of certification in spite of a facsimile sent to counsel requesting a response.

The record includes, but is not limited to, the applicant's adjustment of status application and documents relating to his criminal history. The entire record was reviewed and considered in arriving at a decision on the appeal.

Adjustment of status is not merely based on statutory eligibility, but it is also a matter of discretion. *Jarecha v. INS*, 417 F.2d 220 (5th Cir. 1969) status, in pertinent part:

...The determination to grant permanent residence status under section 245 of the Immigration and Nationality Act, 8 U.S.C. 1255, lies entirely within the discretion of the Attorney General [Secretary]. An applicant who meets the objective prerequisites for adjustment of status is in no way entitled to that relief...

The question of whether to exercise favorable discretion involves a balancing of an alien's undesirability as a permanent resident with the social and humane considerations present to determine whether granting permanent residency is in the best interests of the country.

The applicant's favorable factors include his lawful entry into the United States, lawful parolee status, stable employment and payment of taxes.

The record reflects that the applicant was found guilty of disorderly conduct, a class 6 misdemeanor, nondangerous and nonrepetitive offense in violation of Arizona Revised Statutes § 13-2904 on July 2, 1998. The applicant was sentenced to three months in jail and two years of probation. The AAO will consider the applicant's police report in its discretionary analysis. The Board of Immigration Appeals (BIA) stated in *Matter of Teixeira*, 21 I&N Dec. 316 (BIA 1996) that:

The question posed by the respondent's application for discretionary relief is whether he warrants a favorable exercise of discretion. The police report may be helpful in answering that question, because it bears on the issue of the respondent's conduct when he was arrested,

and this in turn is germane to whether the respondent merits discretionary relief from deportation.

The applicant's police report indicates that the applicant assaulted his then-girlfriend by punching her in the face several times, threatening her with a handgun on multiple occasions and threatening her verbally. The report reflects that her left eye was swollen, her front tooth was loose and her chest was bruised from the applicant's actions. The victim also stated that the applicant had been violent in the past. It appears that the applicant was arrested for aggravated assault/domestic violence, however, he plead guilty to the lesser offense of disorderly conduct.

The AAO notes that the burden of eligibility for adjustment of status lies with the applicant. The record reflects that the applicant is a violent individual with no evidence of reformation. The AAO finds that the adverse factors outweigh the minimal favorable factors.

Therefore, the applicant's adjustment of status application was properly denied as a matter of discretion

ORDER: The acting district director's decision is affirmed and the application denied.