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

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

A-2

FILE:

Office: NEW ORLEANS FIELD OFFICE

Date:

AUG 03 2009

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 APPLICANT:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, New Orleans, Louisiana, who certified his decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The application will be 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) of November 2, 1966. 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.

A review of the record reveals the following facts and procedural history: On or about May 16, 2007, the applicant arrived at Brownsville, Texas port of entry and presented himself and a Cuban birth certificate to an officer of Customs and Border Protection (CBP). The CBP officer served a Notice to Appear (NTA) upon the applicant for a hearing before an immigration judge, and the applicant was paroled into the United States pending the outcome of his hearing. On August 21, 2008, the applicant filed the instant Form I-485, Application to Register Permanent Residence or Adjust Status, with United States Citizenship and Immigration Services (USCIS). On September 29, 2008 the applicant's case before the immigration judge was administratively closed for the applicant to pursue adjustment of status pursuant to the CAA.

During a December 16, 2008 interview with a USCIS officer, the applicant under oath indicated that he had never committed any crimes rather that he had been falsely accused. The record does not include any further information regarding the "false accusation." In a February 9, 2009 interview with a USCIS officer, the applicant under oath answered "no" when asked if he had ever knowingly committed any crime of moral turpitude or drug-related offense for which he had not been arrested and when asked if he had ever, in or outside the United States, been arrested, cited, charged, indicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations.

The field office director issued a request for further evidence (RFE) on February 23, 2009 requesting:

Please submit certified copies of police clearances (this is a report from police officials detailing any arrests, or that you have no record of arrests) from every city where you have lived for six months or more since you came to the United States. Any claims of no record must be certified by the Clerk of Court in both the felony and misdemeanors divisions in the parish or county where you lived.

In response, the applicant submitted a police clearance from the sheriff of East Baton Rouge Parish, Louisiana for [REDACTED]

The field office director issued a second RFE on May 5, 2009. The RFE noted that “FAILURE TO PROVIDE REQUESTED EVIDENCE MAY RESULT IN THE DENIAL OF YOUR APPLICATION” and requested:

Please submit certified copies of every arrest report or conviction, either in Cuba, or in the United States. The documents must contain the information or indictment, the judgment, and the sentence for every arrest or conviction. Submit copies of all probation orders along with evidence of the **completion** of sentences, including probation or alternative forms of sentencing. If any arrest or conviction was expunged, vacated, set aside, sealed or otherwise removed from your record, submit a certified copy of the court order expunging, vacating, setting aside, sealing or otherwise removing the arrest or conviction, **or** an original statement from the court that no record exists of your arrest or conviction. Any claims of no record must be certified by the Clerk of Court in both the felony and misdemeanor divisions in the parish or county of arrest.

The field office director also noted that the applicant must submit the evidence within 30 days and that failure to do so may result in the denial of the application.

In a response, received by the field office on May 13, 2009, the applicant wrote: “Hi, my name is [applicant’s name.] I don’t live in Cuba anymore, please I need my record from Cuba! thanks.”

On May 19, 2009 the field office director rendered his decision on the Form I-485 and certified the matter to the AAO for review. The field office director noted that police and prison records are available from the Cuban Ministry of Justice and that former citizens of Cuba are considered Cubans by the Cuban Government and must apply for civil documents through Cuban diplomatic and consular missions abroad. The field office director informed the applicant that USCIS records indicate that he is considered an INTERPOL fugitive and that there is an outstanding warrant for his arrest issued by the Cuban government charging him with robbery with violence and intimidation. The field office director determined that the applicant’s denial of ever knowingly committing any crime of moral turpitude for which he had not been arrested and his denial that he had not been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance, excluding traffic violations in or outside the United States constituted a misrepresentation of a material fact.

Section 212(a)(6)((C)(i) of the Act provides:

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

Based on information in the record that an international warrant had been issued for the applicant for involvement in robbery with violence and intimidation and the applicant’s denials, the field office

director determined that the applicant is inadmissible and thus, that the Form I-485 must be denied pursuant to section 245(a)(2) of the Act.¹

In response to the field office director's certification of the matter to the AAO, the applicant requested 180 days of additional time to submit a brief or statement and to have time to get responsive documents from Cuba.

The record on appeal includes a Certification of Criminal Background naming the applicant. The Certification includes the seal of the director of the Central Registry, Ministry of Justice, Republic of Cuba, certifying that the Central Registry's file does not show any criminal records for the applicant. The certification is dated June 16, 2009.

The AAO finds, however, that the applicant has not presented any statement in this matter to clarify any claim that he had been "falsely accused." The Certification of Criminal Background document does not include sufficient information to clarify the circumstances of the international warrant issued for the applicant for involvement in robbery with violence and intimidation. The AAO finds the issuance of an arrest warrant with a charge that includes violence with intimidation a significant negative factor. The applicant has not provided any information for the record that explains, acknowledges, defends, or otherwise discusses the circumstances giving rise to the international arrest warrant. In addition, the AAO finds that the applicant has not submitted a police clearance from the Baton Rouge, Louisiana that includes a search of Baton Rouge parish's records for all the names the applicant has used. Thus, the police clearance does not satisfy the regulation.

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 not met his burden. Accordingly, the director's decision is affirmed.

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

¹ The director's reference to section 245(a) of the Act was in error, as the applicant is seeking to adjust his status under section of the CAA.