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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: MIAMI, FL

Date:

JAN 14 2009

IN RE:

Applicant:

[REDACTED]

PETITION: 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.

John F. Grissom, Acting Chief
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 affirmed.

The applicant is a native and citizen of Cuba who on September 3, 1996 filed the 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 had failed to submit the documentation requested regarding his criminal records to determine his admissibility to the United States. As the applicant had failed to meet his burden of proof, the District Director denied the application to adjust to lawful permanent resident. *District Director's certification*, dated September 12, 1997.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. The applicant did not submit any additional brief or written statement.

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

(A) Conviction of certain crimes.-

(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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(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.

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

(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 . . .

No waiver shall be provided under this subsection in the case of an alien who has been convicted (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture...

The AAO observes that the record now contains some of the evidence previously requested by the District Director, including the disposition for the applicant's September 23, 1980 arrest which establishes that the applicant pled guilty on November 7, 1980 to attempted petit larceny under Article 110 § 155.25 of the New York Consolidated Laws. *Certificate of Disposition, Criminal Court of the City of New York*, dated November 7, 1980. The record establishes that the applicant was sentenced to a fine of \$250 or 60 days. *Id.* The applicant was also arrested on July 5, 1979 for Theft of Services. *FBI sheet*. The applicant was also arrested on September 29, 1988 and January 10, 1990. *See arrest records*, dated September 29, 1988 and January 10, 1990 respectively. The record does not include any conviction records for these arrests.

Petit larceny in New York is a crime involving moral turpitude. *Caesar v. Ashcroft*, 355 F.Supp.2d 693, 703 (S.D.N.Y. 2005). While this conviction may qualify for the petty offense exception under section 212(a)(2)(A)(ii) of the Act, the applicant has not submitted documentation regarding the disposition for his 1979 arrest for Theft of Services under Article 165.15 of the New York Consolidated Laws which also appears to qualify as a crime involving moral turpitude. As the applicant has not submitted evidence to prove that he was not convicted of a second crime involving moral turpitude, the applicant continues to be unable to establish his admissibility to the United States.

The AAO concurs with the District Director's finding in 1997 that the applicant failed to meet his burden of proof in that he did not provide his conviction records as requested. The District Director was unable to determine that the applicant was admissible under the medical and criminal grounds of section 212(a) of the Act due to the applicant's failure to submit a Form I-693, Report of Medical Examination and Vaccination Record, a Miami-Dade police clearance letter, and the dispositions for his arrests.

An applicant must demonstrate by a preponderance of the evidence that he is eligible for the benefit sought. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, places the burden of proof upon the applicant to establish that eligibility. The applicant has not met his burden of proof in this particular case for he has failed to show that he is not inadmissible under section 212(a) of the Act.

The 1997 decision of the District Director to deny the application will be affirmed.

ORDER: The District Director's decision is affirmed.