

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

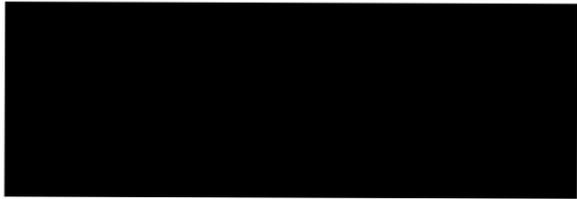


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

A₂



FILE: Office: BALTIMORE, MARYLAND Date:

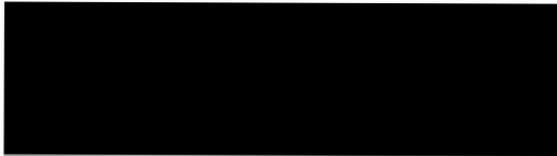
JUL 07 2009

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 District Director, Baltimore, Maryland, who certified his decision to the Administrative Appeals Office (AAO) for review. The AAO affirmed the district director's decision. The matter is now before the AAO on a motion to reopen or reconsider its decision on certification. The motion will not be granted. The application remains 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.

A review of the record reveals the following facts and procedural history: On September 21, 2006, the applicant filed the instant Form I-485 with U.S. Citizenship and Immigration Services (USCIS). During an interview with a USCIS office in September 2007, the applicant was requested to submit, within 12 weeks, police clearances for all jurisdictions where the applicant had lived in the United States for more than six months. The applicant submitted a police clearance from the State of Maryland in October 2007; however, the applicant's Form G-325A, Biographic Information, indicated that the applicant had lived in the State of Florida for more than one year. The applicant did not submit a police clearance pertaining to his residence in the State of Florida. The district director determined that the applicant was not eligible for adjustment of status because he failed to establish that he was not convicted of a crime involving moral turpitude or otherwise admissible to the United States and certified his denial decision to the AAO for review. The director informed the applicant that he had 30 days to supplement the record with any evidence that he wished the AAO to consider. The applicant did not submit further evidence for consideration. The AAO affirmed the district director's decision finding that as the applicant had not submitted the required police clearance from the jurisdictions where the applicant lived in the State of Florida, the application must be denied.

On motion, counsel for the applicant asserts that the applicant who was self-represented when preparing the application and submissions to USCIS and the AAO did not know the importance of obtaining the police clearances requested, was unsure how to get the police clearances requested, and did not understand the repercussions of failing to obtain the police clearances requested. Counsel submits the Florida State police clearance on motion.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The petitioner has not submitted any new facts. Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the

previous proceeding. The police clearance presented on motion had been requested by USCIS prior to the district director's decision, as well as prior to the AAO's decision on certification. The petitioner's lack of understanding the repercussions of failing to provide the required evidence is no excuse. The applicant in this matter has not provided an affidavit or evidence on motion substantiating new facts to be presented in this proceeding. The AAO observes that motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. In this matter, the applicant has not provided evidence sufficient to reopen the prior proceeding.

Neither has the applicant submitted any pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or USCIS policy based on the evidence of record at the time of the initial decision. The applicant fails to establish that the decision was an incorrect application of the law by pertinent precedent decisions, or establish that the director or the AAO misinterpreted the evidence of record. The evidence fails to satisfy the requirements of a motion to reconsider.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The regulation at 8 C.F.R. § 103.5(a)(4) states: "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be denied, the proceedings will not be reopened, and the previous decision of the AAO will be affirmed.

ORDER: The decision of the AAO is affirmed. The petition is denied.