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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEWARK, NEW JERSEY

Date:

MAR 05 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:

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.

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 (FOD), Newark, New Jersey, who certified her 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 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: The applicant claims to have first entered the United States on or about November 16, 1961 at which time he was paroled into the United States. On August 31, 1978, the applicant was convicted of criminal sale of a controlled substance in the fifth degree and on November 30, 1978 he was sentenced to five years of probation. The applicant filed an I-485 application to adjust status pursuant to section 1 of the CAA and was interviewed on August 29, 1980. On June 23, 1982, the applicant was requested to provide additional information; however, he failed to provide that information and the Form I-485 was denied on August 20, 1982. On or about April 29, 2007, the applicant filed the instant Form I-485. At an interview with a Service officer regarding this application, the applicant admitted to his 1978 conviction stating further that the particular controlled substance was cocaine¹.

In an August 18, 2008 decision, the director determined that the applicant was not eligible for adjustment of status because his criminal history made him inadmissible to the United States. The director denied the application and certified her 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. In response, the applicant submitted an undated letter to the AAO requesting "an appeal hearing for oral argument." The application does not present any additional evidence on appeal.

As a preliminary matter, the AAO will address the applicant's request for oral argument. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services (USCIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the applicant identified no unique factors or issues of law to be resolved. In fact, the applicant set forth no specific reasons why oral argument should be held. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

The AAO will now address the applicant's admissibility in light of his 1978 conviction for cocaine possession.

¹ The AAO notes that the applicant's RAP sheet shows a February 17, 1989 arrest for simple assault that was remanded to the lower court. The record does not contain any additional information about this arrest or its disposition.

Section 212(a)(2)(A) of the Immigration and Nationality Act (INA) states:

(i) In general.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

* * *

(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.

The applicant's August 31, 1978 conviction for cocaine possession makes him inadmissible under section 212(a)(2)(A) of the INA. There is no waiver available for this ground of inadmissibility. 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 AAO affirms the decision of the director to deny the applicant's application to adjust status pursuant to section 1 of the CAA.

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