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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 first entered the United States on or about May 20, 1980 during the Mariel Boatlift. In 1998 officers from the legacy Immigration and Naturalization Service (INS) issued a Notice to Appeal (NTA) to the applicant, and was ordered excluded by an immigration judge on February 10, 2000. The applicant filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed in January 2003. Immigration and Customs Enforcement (ICE) placed the applicant under an order of supervision with notification to periodically report to ICE. The applicant's RAP sheet shows the following criminal history:

- On September 2, 1983, the applicant was found guilty of burglary and possessing burglary tools and was sentenced to five years of probation.
- On October 17, 1983, the applicant was found guilty of possessing burglary tools and receiving stolen property and was sentenced to 364 days of confinement and placed on probation for two years.
- On January 13, 1984, the applicant was found guilty of contempt of court and marijuana possession and was assessed a \$100.00 fine.
- On June 22, 1984, the applicant was convicted of felony burglary and was sentenced to three years of confinement.
- On April 17, 1985, the applicant was found guilty of shoplifting and sentenced to 15 days of confinement and ordered to pay a fine of \$225.00.
- On April 10, 1986, the applicant was found guilty of cocaine possession and was sentenced to three years of confinement.
- On August 29, 1994, the applicant was found guilty of hindering an apprehension and possession of CDs or Analog and was sentenced to 364 days of confinement, placed on five years of probation, was ordered to pay a fine of \$1,150.00, and had his license suspended for six months.

In a July 30, 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. The applicant did not submit additional evidence for consideration.¹

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

(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.

Section 212(a)(2)(B) of the INA states:

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.

The applicant's multiple convictions make him inadmissible under section 212(a)(2)(B) of the INA, and his April 1986 conviction for cocaine possession makes him inadmissible under section 212(a)(2)(A)(i)(II) of the INA. There is no waiver available to the applicant. 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.

¹ The denial letter indicates that the applicant was convicted of cocaine possession on February 26, 1986 and again on August 29, 1994. The applicant's RAP sheet, however, shows that his conviction for cocaine possession occurred on April 10, 1986, not February 26, 1986. Also the applicant's August 29, 1994 conviction was not for cocaine possession; it was for hindering apprehension and possessing CDs for Analog.