

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

A 2



FILE:



Office: NEWARK, NEW JERSEY

Date:

MAR 10 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 29, 1980 during the Mariel Boatlift. He applied for asylum and was interviewed regarding his claim on May 31, 1980, the same date on which he was paroled into the United States. On November 9, 1993, the applicant pled guilty to one count each of trafficking in cocaine and conspiracy to traffic in cocaine. The applicant's arrest report indicates that the applicant had two kilograms of cocaine in his possession at the time of his arrest. The applicant was sentenced to five years in prison, and ordered to pay a fine of \$100,000 plus a \$5,000 surcharge. On March 21, 1994, the applicant was ordered excluded from the United States by an immigration judge. The applicant filed the instant Form I-485 on September 19, 2006.

In an October 3, 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 has not submitted additional evidence for consideration.

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.

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 conviction on two counts related to cocaine trafficking makes him inadmissible under section 212(a)(2)(A)(i)(II) of the INA (controlled substance violation) as well as section 212(a)(2)(B) of the INA (multiple criminal convictions). There is no waiver of inadmissibility 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.