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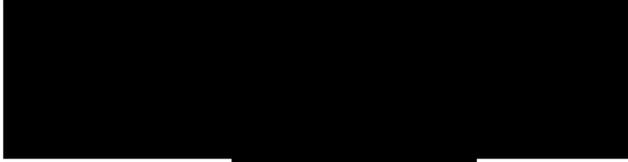
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

A-2



FILE:



Office: CLEVELAND, OHIO Date:

LIN 08 184 50069

**APR 05 2010**

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).

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Cleveland, Ohio, who certified her decision to the Administrative Appeals Office (AAO) for review. The field office 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.<sup>1</sup> 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 entered the United States on or about May 3, 1980 during the Mariel Boatlift. Among other charges and convictions, the record shows that the applicant was arrested on July 3, 1986 by the Toledo, Ohio Police Department and charged with aggravated trafficking in drugs in violation of section 2925.03(A)(1) ORC, that the applicant pled guilty to the charge, and was sentenced to one and one-half years in the penitentiary. The record also shows that the applicant was arrested on February 17, 1989 by the Toledo, Ohio Police Department and charged with aggravated trafficking – prior conviction and that the applicant pled guilty to aggravated trafficking in drugs and was sentenced to two years imprisonment and the sentence was suspended upon certain conditions.

The Form I-485 that is the subject of this certification was filed on June 9, 2008. In an August 28, 2009 decision, the field office director listed the applicant's criminal convictions and determined that the applicant was inadmissible pursuant to section 212(a)(2) of the Immigration and Nationality Act because of the two drug trafficking offenses, drug abuse, and a weapons charge. The field office director also determined that the applicant did not qualify for an exception. 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. On certification, the applicant submits several letters from relatives who indicate, in part, that although the applicant had made mistakes in the past, he had paid for those mistakes and should not be sent back to Cuba.

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

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<sup>1</sup> On the Form I-485, the applicant checked box (e) filing as a native or citizen of Cuba, as well as box (h) admitted as a refugee. The Form I-485 also shows that the field office director made changes to the Form I-485 noting that the applicant had been granted asylum or derivative asylum status. As the record in this matter shows that the applicant is a native or citizen of Cuba, and does not include evidence of a grant of asylum or derivative asylum status, the AAO will adjudicate the applicant's appeal as an appeal pursuant to the CAA.

C) **CONTROLLED SUBSTANCE TRAFFICKERS**- Any alien who the consular officer or the Attorney General knows or has reason to believe--

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

Upon review, the AAO finds that the applicant's convictions related to drug trafficking makes him inadmissible under section 212(a)(2)(C) of the INA (controlled substance trafficker). 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.