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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

A2

FILE:

Office: NEWARK, NEW JERSEY

Date:

APR 06 2010

IN RE:

Applicant:

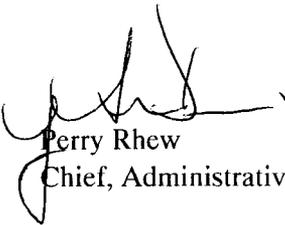
APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF APPLICANT:

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).


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, 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 7, 1980 in Florida during the Mariel Boatlift. The applicant's initial parole into the United States was revoked in March 1988 upon the applicant's release from the custody of the Florida Department of Corrections. The applicant was approved for release from the United States Bureau of Prisons in November 1991 and again issued parole documentation.

The applicant filed the Form I-485, Application to Register Permanent Resident or Adjust Status, on June 13, 2008 and was interviewed regarding the application on August 24, 2009. The record also includes the applicant's Form I-602, Application by Refugee for Waiver of Grounds of Excludability, which was denied on November 2, 2009 as the applicant did not meet the requirements for filing a Form I-602.

The director listed the applicant's extensive criminal history of arrests and dispositions of those arrests; the AAO will not repeat the list of offenses here. The director determined that the applicant's July 24, 1987 arrest and subsequent conviction of possession of cocaine in violation of section 893.13 of the Florida Statutes and the imposition of a prison term of two years and 50.3 hours of community service, is a violation of section 212(a)(2)(A)(i)(II) of the Act and renders the applicant inadmissible. The director also determined that the applicant's violation of section 212(a)(2)(A)(i)(II) of the Act is not a violation that may be waived; thus the applicant is not eligible to file a Form I-601, Application for Waiver of Ground of Inadmissibility.

The director further found, upon review of the totality of the record, that the applicant had not established that his application merits a favorable exercise of discretion. The director noted she had considered the positive factors in this matter including that the applicant was the father of a United States citizen son and had been married to a United States citizen for six years. The director found, however, that the negative factors in this matter, including the applicants numerous arrests and charges relating to possession of controlled substances to wit: marijuana and cocaine, theft of vehicles, burglary involving the theft of clothes and electronic equipment from several retail businesses in the State of Florida, trespassing charges in several closed and unoccupied businesses in

the State of Florida, the applicant's prison terms, his lack of respect for law and order, and his lack of good moral character outweighed the positive factors presented.

On November 24, 2009, the director determined that the applicant was not eligible for adjustment of status as a matter of law and as a matter of discretion. As noted above, the director 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 record does not include further evidence submitted on certification. Thus, the record is considered complete.

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.

The AAO concurs with the director's determination that the applicant's criminal history includes a conviction for a controlled substance violation. Accordingly, the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(II). The director also correctly determined that there is no waiver available to the applicant 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.