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

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 06 2010

MSC 09 015 13809

IN RE: Applicant: [redacted]

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:

[redacted]

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 Director, California Service Center, 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 17, 1980 as part of the Mariel boatlift. The applicant was admitted in parole status on or about May 19, 1980 as an asylum applicant. The applicant was arrested on November 26, 1986 and charged with aggravated assault in violation of New Jersey Statute 2C:12-1B and robbery in violation of New Jersey Statute 2C:15-1. He pled guilty and was convicted on the robbery charge on July 10, 1987 and was sentenced to five years. On October 15, 2008 he filed Form I-485, Application to Register Permanent Resident or Adjust Status. The applicant is currently in removal proceedings.

In an October 14, 2009, decision, the director determined that while the applicant appeared to be statutorily eligible to adjust status, the applicant's 1987 conviction was an adverse factor that was not outweighed by the limited positive factors in this matter. Accordingly, the director determined that the applicant had not shown he warranted an exercise of favorable discretion and thus the application was denied as a matter of discretion. 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-
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, is inadmissible.

The AAO finds that the applicant's criminal history does include a crime involving moral turpitude, for which he was convicted and sentenced to confinement of not more than five years. Accordingly, the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act.[1]

However, the applicant is eligible to seek a waiver of section 212(a)(2)(A)(i)(I) of the Act pursuant to section 212(h) of the Act. To seek such waiver, an applicant must file an Application for Waiver of Grounds of Inadmissibility (Form I-601).

In this matter, the applicant did not file the required I-601 waiver before U.S. Citizenship and Immigration Services.[2] Accordingly, the AAO affirms the director's denial of the application for adjustment of status, as the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act and this ground of inadmissibility has not been waived.

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

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[1] The AAO does observe that a crime involving moral turpitude must involve both reprehensible conduct and some degree of scienter, be it specific intent, deliberateness, willfulness or recklessness. *Matter of Silva-Trevino*, 24 I&N Dec. 687, 689 n.1, 706 (A.G. 2008). When determining whether a crime involves moral turpitude, the statute under which the conviction occurred controls. *See Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 186 (2007)(citing *Taylor v. United States,* 495 U.S. 575, 599-600 (1990)); *Matter of Louissaint,* 24 I&N Dec. 754, 757 (BIA 2009); *Matter of Silva-Trevino*, 24 I&N Dec. at 696. Upon the AAO's review of New Jersey Statute 2C:15-1, a violation of this statute is a crime involving moral turpitude.

[2] The record includes a copy of a Form I-601 waiver application that was filed in October 2008 before the immigration court.