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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

[redacted]

File: [redacted] Office: NEWARK, NEW JERSEY Date: JUN 03 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 pertinent part:

> The 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.

The director denied the application on November 24, 2009 as a matter of discretion due to the applicant's criminal history. The director certified her decision to the AAO for review and provided the applicant with a period of 30 days to supplement the record with a brief or any additional evidence. On December 18, 2009, counsel submitted additional evidence, including a brief and a letter from the applicant to The Honorable H. Epperson. The AAO, therefore, considers the record complete and ready for adjudication.

As the facts and pertinent procedural history have been adequately addressed in the director's decision, only certain facts shall be repeated here. The applicant was originally paroled into the United States on February 10, 1995. On May 11, 1998, the applicant filed his first application to adjust status, which was denied on March 12, 2004 for failure to appear for a scheduled interview. On October 10, 2006, the applicant filed a second application to adjust status. That application was denied on April 3, 2008 and the applicant was placed into removal proceedings before the immigration court. The applicant filed his third application to adjust status on October 17, 2008, which is the subject of this certification. The record contains the following documents pertaining to the applicant's convictions[1]:

- July 22, 2002: [redacted] – State of Mississippi, [redacted] The applicant pled guilty and paid of fine of $181.50 and with a $69.50 assessment.
- October 8, 2002: "Battery (class B misdemeanor)" – State of Kansas, [redacted] The applicant pled guilty and was sentenced to 90 days in jail (suspended) and a $100.00 fine.

[1] The applicant's criminal record also includes several charges against him that were later dismissed. Only the applicant's actual convictions are being listed in this decision.

- February 9, 2004: "Domestic Violence/Simple Assault" – State of Mississippi, The applicant pled guilty and was sentenced to 180 days (time suspended), one year of probation, and a $262.00 fine with an assessment of $71.00.
- August 18, 2006: "Criminal Mischief - Damage Property" – Superior Court of New Jersey, The applicant was placed on probation for one year, ordered to pay $20.00 per month, and ordered to participate in a domestic violence initiative.

As stated earlier, the director denied the application as a matter of discretion because of the applicant's criminal history. The director also noted that the applicant had an outstanding warrant for an arrest that was issued on or about February 22, 2008 in Kissimmee, Florida. The director concluded that, based upon his criminal record, including the outstanding warrant for his arrest, the positive factors in the applicant's case were outweighed by the negative factors. The director, therefore, denied the applicant's adjustment application as a matter of discretion.

In response to the director's certification notice, counsel first addresses the issue of the applicant's outstanding warrant. According to counsel, the applicant has never been detained or arrested in Kissimmee, Florida and that someone must have provided the applicant's personal information or documents. Counsel submits a letter, dated November 30, 2009, which the applicant wrote to The In this letter, the applicant requests a date to appear in court on case number 2008 CT 155. According to counsel, the applicant was set to have a court date in February 2010.[2]

Regarding the applicant's criminal history, counsel states that none of the applicant's convictions make him ineligible for adjustment of status. He states further that the applicant has been rehabilitated and respects all state and federal laws, rules and regulations, and is a person of good moral character. Counsel asserts further that the applicant's negative factors are outweighed by his positive factors, which include being the father of three U.S. citizen children, being married to a U.S. citizen for nine years, and being the son of a lawful permanent resident.

Based on our review of the record, we concur with the director that the applicant does not warrant a favorable exercise of discretion. The applicant's letter to The Honorable H. Epperson does not resolve the outstanding warrant against him. Neither counsel nor the petitioner has submitted any evidence regarding this alleged court date, or evidence of a resolution to the applicant's outstanding arrest warrant. In addition, the applicant's criminal history, which includes convictions for misdemeanor battery, domestic violence/simple assault, and criminal mischief, are negative factors that outweigh any positive factors in the applicant's case. While counsel maintains that the

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[2] Counsel has not submitted any evidence in support of his statement that the applicant's court date was scheduled for February 2010. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

applicant's positive factors include his spouse, three children, and lawful permanent resident father, the record does not contain, and counsel has not submitted, evidence of the U.S. citizenship of the applicant's spouse, the lawful permanent resident status of his father, or the birth of his children. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Based upon the record before us, we concur with the director and find that the applicant has not met his burden of proof in establishing that a favorable exercise of discretion is warranted. Accordingly, the applicant's application to adjust status is denied.

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