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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

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FILE:



Office: ORLANDO FIELD OFFICE

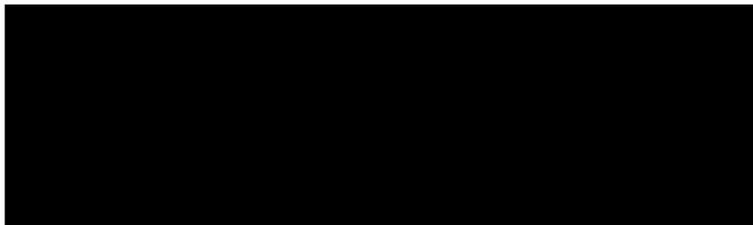
Date:

**MAR 12 2010**

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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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Orlando, Florida, 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. 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 was paroled into the United States on September 27, 1979 at Miami, Florida. The Form I-485, Application to Register Permanent Residence or Adjust Status, that is the subject of this certification was filed on July 6, 2007. The record includes evidence of the applicant's lengthy arrest record including: (1) evidence of the applicant's guilty plea on October 25, 2007 to cocaine possession in violation of FL893.13 (6A), possession of a controlled substance without prescription, a third degree felony with a disposition date of October 25, 2007 showing a sentence of two days in jail; and (2) a conviction of loitering and prowling under FL856.021 on December 17, 1986 with a sentence of three days in jail. The record also includes evidence that on April 23, 2009, a USCIS adjudicator provided the applicant by hand, a request for evidence, requesting police clearance letters for all residences the applicant had lived in while in the United States for each of his aliases as well as arrest reports, judgment and conviction records and proof of compliance with all court orders for:

An arrest on March 26, 1981 in Miami, Florida for carrying a concealed weapon and loitering and prowling;

An arrest on April 8, 1981 in Miami, Florida for carrying a concealed weapon;

An arrest on June 26, 1981 in Miami-Dade, Florida for carrying a concealed weapon;

An arrest on July 1, 1984 in Miami-Dade, Florida for larceny and making a false report;

An arrest on April 8, 1986 in Miami-Dade, Florida for loitering and prowling;

As arrest on December 17, 1986 in Monroe County, Florida for loitering and prowling;

An arrest on September 12, 2007 in Miami, Florida for cocaine possession; and

An arrest on December 21, 1986 in Monroe County, Florida for trespassing.

The USCIS adjudicator noted that the applicant had until May 28, 2009 to provide the requested information.

In an August 11, 2009 decision, the field office director determined that the applicant was not eligible for adjustment of status because his criminal history made him inadmissible to the United

States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act). The field office director denied the application and certified her decision to the AAO for review. The field office 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 did not provide further information. 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.

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The AAO finds that the applicant's October 25, 2007 conviction, by itself, makes him inadmissible under section 212(a)(2)(A)(i)(II) of the INA (controlled substance violation). There is no exception for a violation of section 212(a)(2)(A)(i)(II). There is no waiver of inadmissibility available to the applicant. Moreover, the applicant failed to respond to the field office director's request for police clearances and dispositions of the application's numerous arrests. An application for adjustment of status under section 1 of the CAA must include a clearance from the local police jurisdiction for any area in the United States where the applicant has lived for six months or more since his or her 14th birthday. 8 C.F.R. § 245.2(a)(3)(iv). As the applicant has not submitted the required police clearance from the jurisdictions where the applicant lived in the State of Florida, the application must also be denied for this reason.

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.