



U.S. Citizenship
and Immigration
Services

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File: [Redacted]

Office: NEWARK FIELD OFFICE

Date:

SEP 10 2010

IN RE: Applicant: [Redacted]

Application: Application for Adjustment of Status to that of Person Admitted for Permanent Residence under Section 1 of the Cuban Refugee Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF PETITIONER:



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 Field Office Director, Newark, New Jersey, denied the application for adjustment of status (Form I-485) and 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 or about June 4, 1980 at Key West, Florida as part of the Mariel Boat Lift. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on April 15, 1995 which was denied on June 11, 1997 for failure to respond to the director's request for further evidence (RFE). The applicant was granted 30 days from June 11, 1997 to effect his departure from the United States voluntarily. The applicant did not comply; however no proceedings were instituted against the applicant. On October 5, 2009, the applicant filed the Form I-485 that is the subject of this certification. The applicant was interviewed by a United States Citizenship and Immigration Services (USCIS) officer on March 22, 2010.

On June 8, 2010, the field office director denied the Form I-485 application finding that the applicant had failed to establish that he is eligible for adjustment of status and that his application merits a favorable exercise of discretion. The field office director noted the denial was a matter of discretion. The field office director certified her decision to the AAO for review. In response to the certification, counsel for the applicant presented a brief and provided additional documentation.

The field office director found that the applicant had the following unfavorable factors in this matter including:

- On February 18, 1983, the applicant was arrested and charged with the following violations: one count of violating NJ 2C:39-5 (c), Possession of Weapon and one count of violating NJ 2C:29-2(a)(1), Resisting Arrest. The applicant was tried and found guilty of both violations. Both convictions are felony convictions. On July 29, 1983, a judge in the Union County Criminal

court sentenced the applicant to a term of four years of probation for the first count and 18 months of probation for the second count.

- On December 9, 1984, the Palm Beach Police arrested the applicant and charged him with one count of Disorderly Conduct, Prowling and the applicant was found guilty as charged on December 11, 1984.
- On August 12, 1985, the Palm Beach Police arrested the applicant for violating terms of his parole and transferred him to Union County, New Jersey. On September 6, 1985, a judge ordered the applicant to serve four years in prison and to serve an additional 18 month prison term to run concurrently with the first sentence. The applicant was paroled on May 27, 1986 and was discharged from parole supervision on April 18, 1988.
- On March 23, 1996, the applicant was arrested and charged with violating NJSA 39:4-50, Driving Under the Influence of liquid/drugs. He was found guilty as charged on May 15, 1996 and ordered to pay a \$55 fine.
- On June 22, 1996, the applicant was arrested and charged with violating NJ 2C:17-3, Criminal Mischief. On June 26, 1996, a judge found the applicant guilty as charged and ordered him to pay a \$100 fine and another \$102 for contempt.
- On October 17, 1997, the applicant was charged with one count of violating NJSA 39:4-50, Driving Under the Influence of liquid/drugs and was found guilty as charged on October 17, 1997 and ordered to pay a \$600 fine.
- On August 7, 2004, the applicant was charged with violating a local ordinance in Atlantic City, New Jersey, to-wit: 204-24(b)(1), Prohibited Acts (Sleeping in Public). On April 20, 2006, the applicant was tried and found guilty as charged.
- The City of Plainfield, New Jersey, local police clearance shows an arrest on warrant on March 24, 2006. A final disposition of the arrest has not been provided.

The field office director also found the applicant's failure to depart within 30 days after the denial of his Form I-485 on June 11, 1997, an additional adverse factor.

The field office director noted that the applicant listed two United States citizen daughters on his Form I-485 application but did not provide copies of their birth certificates demonstrating the family relationship or their citizenship. The field office director also noted that the petitioner had provided two unsworn statements from two individuals, [REDACTED] to demonstrate the hardship they would experience if the applicant was returned to Cuba. The field office director noted that although [REDACTED] indicated that she resided with the applicant as his wife, the applicant had not provided proof of her citizenship. The director acknowledged that although no proof of citizenship or proof of relationship was provided for these two individuals, if the claimed relationship did exist and the applicant was forced to leave the United States, the separation might result in hardship to the applicant's United States relatives.

The field office director also determined that the applicant would face hardship if forced to return to Cuba based on the current country conditions in Cuba.

As referenced above, upon review of these positive and negative factors, the field office director determined that the applicant had failed to establish that he is eligible for adjustment of status and that his application merits a favorable exercise of discretion. The field office director denied the application as a matter of discretion and certified the decision to the AAO.

On certification, counsel for the applicant listed five positive factors and asserted that the field office director failed to consider all five factors that would have merited a favorable exercise of discretion. Counsel first notes that the field office director did not consider the length of time that the applicant had resided in the United States. In this matter, the AAO acknowledges that the applicant has been in the United States since 1980 pursuant to parole and thus has shown that he has resided for over 30 years in the United States.

Counsel asserts that the applicant submitted evidence of his family relationships in the United States including a letter of support from his long-time partner, [REDACTED]. Counsel asserts that [REDACTED] is a United States citizen by birth but does not provide a birth certificate in support of the assertion. Counsel notes that the applicant and [REDACTED] live together and cites [REDACTED] unsworn statement in support of the application and utility bills addressed to [REDACTED] at the address where the applicant also claims to reside. Counsel also notes the applicant's assumption of fatherly duties to [REDACTED] daughter and grandchildren as indicated in the unsworn statements of [REDACTED]. Counsel asserts that the applicant's family ties, as demonstrated by these relationships and the photographs submitted, is the second factor that should be considered when considering whether the applicant merits a favorable exercise of discretion.

Counsel contends that the applicant submitted evidence that [REDACTED] specifically, would suffer hardship if the applicant was not allowed to remain in the United States. Counsel references [REDACTED] physical disability as substantiated by her receipt of social security benefits and her inability to work. Counsel contends that [REDACTED] hardship is a third factor to consider when determining whether the applicant merits a favorable exercise of discretion and that the director failed to consider hardship that would be experienced by third parties if the applicant were forced to leave.

Counsel notes that the fourth positive factor, which the field office director did consider, is the hardship that the applicant would experience if forced to return to Cuba.

Counsel notes that the fifth positive factor in this matter is the applicant's work history. Counsel notes that the applicant had earnings from 1980 through 2007 and filed Internal Revenue Service (IRS) Federal Tax Returns in all years except, 1989, 1992, 1993, and 1995.

Counsel contends that the applicant did not disregard federal immigration law when he failed to depart the United States upon the denial of the first Form I-485 filed because he remained in

valid parole status. Counsel observes that the applicant's parole status was never revoked and as such his continued presence in the United States as a Cuban parolee comported with federal immigration law. Thus, counsel asserts that the only negative factor in this matter is the applicant's criminal history.

Adjustment of status is a matter of administrative grace, not mere statutory eligibility. *Matter of Marques*, 16 I. & N. Dec. 314, 315 (BIA 1977). The applicant has the burden of demonstrating that discretion should be exercised in his favor. *Matter of Patel*, 17 I. & N. Dec. 597, 601 (BIA 1980); see also *Matter of Leung*, 16 I. & N. Dec. 12 (BIA 1976), *Matter of Arai*, 13 I. & N. Dec. 494 (BIA 1970).

The AAO finds that the applicant's criminal history is a significant adverse factor. Moreover, counsel does not address the applicant's latest arrest on warrant, on March 24, 2006. The record does not include a final disposition of this arrest. In addition, although the applicant satisfied the terms of his probation for his first serious criminal offenses by 1988, the applicant, beginning in 1996, continued to have difficulty obeying the laws of the states and municipalities, as substantiated by an additional five arrests. It is the continuation of the applicant's disregard of laws that demonstrates his lack of rehabilitation. Further, the applicant has not provided an affidavit explaining the circumstances of any of his arrests, and has not provided evidence of his rehabilitation for USCIS review.

Although the director did not reference the applicant's long residence in the United States and thus perhaps did not consider his residence a positive factor, the AAO finds that the applicant's criminal history significantly outweighs any of the positive factors set forth by the applicant, through counsel. The AAO finds that the field office director did consider the hardship that would be faced by both the applicant and those he would leave behind. The AAO observes, however, that the applicant did not provide further documentary evidence substantiating his familial relationships on certification. The AAO also acknowledges the applicant's employment history. When considered in the aggregate, however, the AAO concurs with the field office director that the applicant has not demonstrated "unusual or even outstanding equities" that outweigh the significant adverse factors, i.e. the applicant's arrests, convictions, and incarcerations, present in this case. In proceedings for adjustment of status under section 1 of the CAA the burden of establishing that the application merits approval remains entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the field office director's decision denying the application will be affirmed.

ORDER: The field office director's decision is affirmed.