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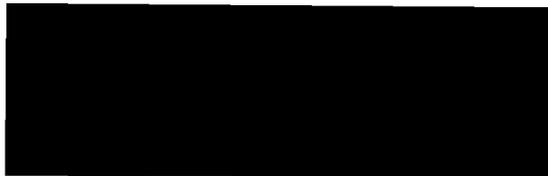
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

A2



DATE:

AUG 15 2011

Office: NEWARK FIELD OFFICE

FILE:



MSC 10 303 17746

IN RE:

Applicant: 

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 APPLICANT:

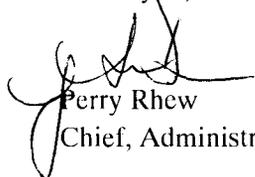
SELF-REPRESENTED

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 \$630. 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 to adjust status and certified her decision to the Administrative Appeals Office (AAO) for review. The field office director's decision is affirmed. The application will remain 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 her discretion and under such regulations as she 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 provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

Section 212(a)(2)(A) of the Immigration and Nationality Act (INA) states:

(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.

Section 212(a)(2) of the Immigration and Nationality Act (INA) states:

(C) Controlled substance traffickers- Any alien who the consular officer or the Attorney General knows or has reason to believe—

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or . . . is inadmissible.

New York Penal Code § 220.31, criminal sale of a controlled substance in the fifth degree, states:

A person is guilty of criminal sale of a controlled substance in the fifth degree when he knowingly and unlawfully sells a controlled substance.

Criminal sale of a controlled substance in the fifth degree is a class D felony.

Facts and Procedural History

The applicant was paroled into the United States in 1980 as part of the [REDACTED]. The petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on July 28, 2010. The applicant's record shows that on August 17, 1987, he pled guilty to a violation of New York Penal Code § 220.31 - criminal sale of a controlled substance in the fifth degree - and that on September 23, 1987, he was sentenced to six months of imprisonment and probation for five years. On June 8, 2011, the field office director denied the Form I-485, determining that the applicant's September 23, 1987 conviction for criminal sale of a controlled substance in the fifth degree, a class D felony, rendered him inadmissible under section 212(a)(2)(A)(i)(II) of the Act and that there was no waiver available for these grounds of inadmissibility. The field office director certified her decision to the AAO. The applicant does not provide further information or evidence on certification. The record is considered complete.

Analysis and Conclusion

We find no error in the director's assessment of the relevant evidence. The applicant's August 17, 1987, conviction for violating New York Penal Code § 220.31 renders the applicant inadmissible to the United States under section 212(a)(2)(A)(i)(II) and section 212(a)(2)(C) of the Act. There is no waiver available to an alien who is inadmissible under section 212(a)(2)(A)(i)(II) of the Act except for a single offense of simple possession of thirty grams or less of marijuana, which is inapplicable to this matter. Similarly, there is no waiver available to an alien who is inadmissible under section 212(a)(2)(C) of the Act.

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. Here, that burden has not been met.

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