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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



FILE:



Office: ORLANDO FIELD OFFICE

Date:

FEB 22 2011

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 application was denied by the Field Office Director, Orlando, Florida, 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.

Applicable Law

Section 212(a)(2)(A) of the Immigration and Nationality Act (the Act) 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.
- (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.

Facts and Procedural History

A review of the record reveals the following facts and procedural history: The applicant first entered the United States on or about October 8, 1995. The applicant was paroled on or about November 14, 1997 for humanitarian reasons. The applicant filed the Form I-485, Application to Register Permanent Resident or Adjust Status, on July 26, 2002. The applicant filed a Form I-601 waiver application on February 22, 2010 which was denied on July 12, 2010. The record includes the applicant's pertinent criminal history as follows:

The applicant pled nolo contendere to the charges of petit theft and contributing to the delinquency of a minor in Orange County, Florida on June 11, 2002;

The applicant pled nolo contendere to the charge of petit theft in Orange County, Florida on September 29, 2003; and

The applicant pled nolo contendere to the charges of habitual traffic offender and possession of marijuana under twenty grams in Orange County, Florida on August 17, 2006.

In an April 8, 2003 decision, the director determined that the applicant was not eligible for adjustment of status because her criminal history made her inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act. The director observed that the applicant's Form I-601 waiver application that was filed pursuant to 212(h) of the Act was denied; thus, United States Citizenship and Immigration Services (USCIS) has determined that the applicant is not eligible for a waiver. The director denied the application and certified her decision to the AAO for review. The director informed the applicant that she had 30 days to supplement the record with any evidence that she wished the AAO to consider.

On certification, the petitioner submits a one-page letter acknowledging she made mistakes in the past and indicating that she will be a better person in the future.

The AAO finds that the applicant's criminal history includes a conviction for possession of a controlled substance. As stated previously, on July 12, 2010, the applicant's Form I-601 waiver application that was filed pursuant to 212(h) of the Act was denied. In that the applicant was found ineligible for a waiver of inadmissibility under section 212(h) of the Act, the applicant is ineligible for adjustment of status pursuant to section 1 of the CAA.

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 she is eligible for adjustment of status. The applicant has not met her 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.