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

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U.S. Citizenship and Immigration Services

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[redacted]

DATE: SEP 26 2011 Office: RALEIGH-DURHAM FIELD OFFICE FILE: [redacted]

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 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 $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, Raleigh-Durham, North Carolina, denied the application to adjust status and certified his 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-
>
> > (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.

Section 212(a)(2)(B) of the INA states:

> Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

Illinois State Statutes at [redacted]

> Sec. 402. Except as otherwise authorized by this Act, it is unlawful for any person knowingly to possess a controlled or counterfeit substance or controlled substance analog. A violation of this Act with respect to each of the controlled substances listed herein constitutes a single and separate violation of this Act. . . .
> (c) Any person who violates this Section with regard to an amount of a controlled substance other than methamphetamine or counterfeit substance not set forth in subsection (a) or (d) is guilty of a Class 4 felony. The fine for a violation punishable under this subsection (c) shall not be more than $25,000.

Florida State Statutes at 832.05

> 832.05 – Giving worthless checks, drafts, and debit card orders; penalty; duty of drawee; evidence; costs; complaint form.—
>
> (3) Cashing or Depositing Item with Intent to Defraud; Penalty –
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> (a) It is unlawful for any person, by act or common scheme, to cash or deposit any item, as defined in s. 674.104(1)(i), in any bank or depository with intent to defraud.
> (b) A violation of the provisions of this subsection constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

North Carolina State Statutes § 14-33. Misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments.

> (c) Unless the conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class A1 misdemeanor if, in the course of the assault, assault and battery, or affray, he or she:
>
> (2) Assaults a female, he being a male person at least 18 years of age;

Texas State Statutes Section 22.02. Aggravated Assault

> (a) A person commits an offense if the person commits assault as defined in Sec. 22.01 and the person:
> (1) causes serious bodily injury to another, including the person's spouse; or
> (2) uses or exhibits a deadly weapon during the commission of the assault.

Facts and Procedural History

The applicant was paroled into the United States in May 1980 as part of the [redacted] The petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on December 23, 2010. The applicant has an extensive criminal record resulting in incarceration on a number of occasions. In brief, the applicant was found guilty of possession of controlled substance in violation of Illinois State Statute 570.0/402-C on May 10, 2001 and was sentenced

to serve 180 days in jail. The applicant was convicted on two counts of violating Florida State Statute 832.05(3) and was sentenced to a term of four years on August 12, 1983. On June 21, 1993, the applicant was convicted of aggravated assault and sentenced to 60 days in [redacted] Texas. On April 14, 1997 and on December 1, 1997, the applicant was convicted of assault on a female and sentenced to 75 days jail and two years supervised probation in North Carolina. On December 8, 2005 he was convicted of assault on a female in the State of North Carolina in violation of North Carolina State Statute 14-33(C)(2) and jailed for 75 days with 18 months probation.

On July 25, 2011, the field office director denied the Form I-485, determining that the applicant's possession of controlled substance conviction rendered him inadmissible under section 212(a)(2)(A)(i)(II) of the Act and that there was no waiver available for this ground of inadmissibility. The field office director determined further that the assaults committed on a female in North Carolina and the violation of Florida State Statute 832.05(3) were convictions of crimes involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The field office director determined that the applicant's convictions did not meet the criteria for a waiver under section 212(h) of the Act and certified his 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 May 10, 2001, conviction for violating Illinois State Statute 570.0/402-C, possession of a controlled substance renders the applicant inadmissible to the United States under section 212(a)(2)(A)(i)(II) 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.

The applicant is also inadmissible under section 212(a)(2)(B) of the Act because he has been convicted of more than two offenses for which his aggregate sentences to confinement exceeded five years. The applicant's conviction for passing worthless checks involved moral turpitude because the statute requires the intent to defraud. *See Jordan v. DeGeorge*, 341 U.S. 223, 232 (1951). The applicant's aggravated assault offense in Texas also involved moral turpitude because the statute of conviction requires a *mens rea* of at least recklessness combined with the aggravated factors of causing serious bodily injury or using a deadly weapon. *See Sosa-Martinez v. U.S. Atty. Gen.*, 420 F.3d 1338, 1342 (11th Cir. 2005) (similar aggravated battery statute); *Pichardo v. INS*, 104 F.3d 756 (5th Cir. 1997) (aggravated assault); *Matter of Logan*, 17 I&N Dec. 367 (BIA 1980) (assault with a deadly weapon). Accordingly, the applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act for convictions of crimes involving moral turpitude. No purpose would be served by determining whether the applicant is eligible for a waiver of these additional grounds of inadmissibility because there is no waiver available for his inadmissibility under section 212(a)(2)(A)(i)(II) 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.