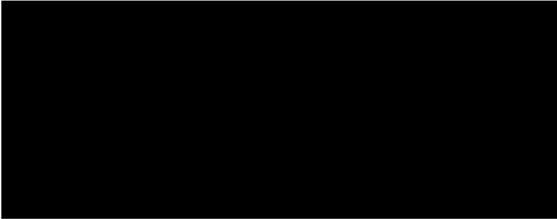


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



A2

DATE: FEB 08 2012

Office: KENDALL FIELD OFFICE

FILE:



IN RE: Applicant:



APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Refugee  
Adjustment 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 \$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 Kendall Field Office Director, Miami, Florida (the director), denied the application to adjust status, affirmed his denial upon granting the applicant's subsequent motion to reconsider, and certified his decision to the Administrative Appeals Office (AAO) for review. The decision of the director will be affirmed.

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 Refugee Adjustment Act (CAA), (Nov. 2, 1966).

The director denied the application, determining that the applicant's membership in the Union of Communist Youths (UJC) from March 1997 until August 2009 rendered him inadmissible to the United States pursuant to section 212(a)(3)(D)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(3)(D)(i). On certification, counsel submits a brief and an additional declaration from the applicant. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

#### *Applicable Law*

Section 1 of 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,<sup>1</sup> 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.

Section 212(a)(3) of the Act prescribes the following ground of inadmissibility:

#### (D) Immigrant Membership in Totalitarian Party

- (i) In General - Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.
- (ii) Exception for Involuntary Membership - Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the [Secretary of Homeland Security] when applying for admission) that the membership or affiliation is or was involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining

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<sup>1</sup> Such authority has since been delegated to the Secretary of the Department of Homeland Security and U.S. Citizenship and Immigration Services (USCIS) pursuant to section 103 of the Act, 8 U.S.C. § 1103.

employment, food rations, or other essentials of living and whether necessary for such purposes.

- (iii) Exception for Past Membership - Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the [Secretary of Homeland Security] when applying for admission) that –

- (I) the membership or affiliation terminated at least—

- (aa) 2 years before the date of such application, or

- (bb) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date, and

- (II) the alien is not a threat to the security of the United States.

#### *Pertinent Facts and Procedural History*

The applicant is a native and citizen of Cuba who was first paroled into the United States on August 8, 2009. On September 26, 2010, the applicant filed a Form I-485, Application to Adjust Status. On January 26, 2011, the applicant was interviewed by a United States Citizenship and Immigration Services (USCIS) officer and on February 18, 2011, the director denied the application. The director subsequently affirmed his denial upon review of the applicant's motion to reconsider and certified his decision to the AAO for review.

The director in this matter determined that the applicant voluntarily joined and rejoined the UJC in order to further his education and career, as well as to obtain the opportunity to leave Cuba. The director also determined that the applicant's membership was more than nominal as he attended meetings and participated in volunteer work on behalf of the UJC.

On certification, counsel asserts that the applicant's UJC membership was involuntary and only to obtain employment and other essentials of living; thus, the applicant falls within the exception at section 212(a)(3)(D)(ii) of the Act. Counsel also contends that even if the applicant's membership was voluntary, he had no meaningful association with the UJC and falls within the additional exception created by the Supreme Court in *Gastelum-Quinones v. Kennedy*, 374 U.S. 469, 471 (1963) and *Rowoldt v. Perfetto*, 355 U.S. 115, 120 (1957). Counsel further asserts that because the government paroled the applicant into the United States with knowledge of his UJC membership, the government should not revisit its prior determination and now find the applicant inadmissible under section 212(a)(3)(D)(i) of the Act. As explained below, the facts and applicable law do not support counsel's claims.

*Applicant's Statements Regarding his UJC Membership*

In a March 22, 2011 declaration, the applicant stated that he first joined the UJC in 1997 when he was 14 years old in order to pursue his studies at IPVCE-Vladimir Ilich Lenin, one of the top science schools in Cuba. The applicant noted that he was "invited" to join the UJC and understood that if he did not join he would not be allowed to study at IPVCE. The applicant declared that he was not active in the UJC and "did [his] best to keep a low profile and focus on [his] studies." The applicant confirmed that in 2001 he finished his studies at IPVCE and performed his obligatory military service at which time it seems his UJC file was lost. He noted that he was never asked to attend any UJC meetings while performing his military service.

In 2002 the applicant was accepted at the University of Medical Sciences in Havana and after completing two years of study, he applied for an internship, but was denied because of questions about his membership in the UJC. The applicant declared that the loss of his file prompted him to join the UJC a second time in order to be eligible for his medical internship and to avoid expulsion from the university. The applicant emphasized that he reestablished his membership in the UJC only in order to be able to pursue his dream of an education and a career in medicine. The applicant recounted the experience of a friend who rejected membership in the UJC in her third year at the university and was allowed to graduate, but was barred from obtaining a decent job and was forced to work at a small, poorly supplied clinic in a rural province far from her home. The applicant claimed that if he had not rejoined the UJC, he would have become a second class citizen. According to the applicant, with his family relying on his salary as a doctor with a job in a decent clinic close to his home, he rejoined the UJC to lessen his worries about essentials like food, clothing, and transportation.

The applicant stated that in 2007 he was selected to go to Venezuela on a three-month medical mission. The applicant explained that he was not yet aware of the United States' special program for Cuban medical personnel but welcomed the opportunity to travel as an opportunity to defect. While in Venezuela, the applicant was unable to figure out a way to defect and thus, returned to Cuba in February 2008. Upon his return, the applicant was assigned to work in a clinic and was asked to hand carry his UJC file from the university to his place of work; but rather than transferring his file, the applicant destroyed it.

After learning in 2008 or 2009 about the U.S. special program of parole for Cuban doctors on missions abroad, the applicant requested permission to be sent on a mission; however, he was told he would not be approved because he was not a member of the UJC. The applicant recounted that he felt compelled to join the UJC for a third time, not only for the opportunity to travel to Venezuela and defect, but also to avoid stigmatization, the possibility of losing his job, and permanently facing obstacles with work and earning a living.

The applicant arrived in Venezuela on May 19, 2009 and on June 6, 2009, he deserted the mission and traveled to Bogota, Colombia where he entered the U.S. embassy and requested asylum. The applicant explained that his membership in the UJC was nominal, that he only attended mandatory meetings and complied with "volunteer" work like painting a building. He

emphasized that he also explained at his interview with USCIS that his membership in the UJC was involuntary and that he joined to continue his studies and prevent the punishments that come with rejecting the UJC.

The record also includes a March 21, 2011 letter written by [REDACTED] who opined that in Cuba there is no more prestigious status than that of a medical doctor; however, entry to medical school requires both excellent grades and good political behavior. [REDACTED] stated that it is understood that to be accepted in Cuba's schools of medicine it is an unwritten mandate that one be a member of the UJC. [REDACTED] further opined: "[o]nce you are a student of medicine your membership may be politically meaningless" and that although a member will have to participate in meetings, volunteer work, and social work, such activity is devoid of political meaning. [REDACTED] explained, however, that if a member leaves the organization while a student or immediately after graduation, the consequence is expulsion from the profession, rejection from studying in a specialization, placement at a remote or rural clinic, or outright denial of employment as a doctor.

On certification, the applicant submits a second declaration, dated August 23, 2011. The applicant explains that his "volunteer" work for the UJC consisted of painting walls, picking potatoes, performing janitorial work at schools, and working in clinics during his vacation time, which was all non-political, mostly menial work. The applicant notes that his attendance at UJC meetings was not meaningful as he attended only to prevent being sanctioned or ostracized publicly. The applicant indicates that once after voicing his opinion at the harsh treatment of individuals attempting to flee Cuba, he was prohibited from speaking or voting at the meetings for three months.

*The Applicant's Second and Third Memberships in the UJC were Voluntary*

The facts establish that the applicant joined the UJC in 1997 when he was 14 years old to obtain his education at a prestigious science school. The applicant continued his studies, after his obligatory military service, in 2002 when the applicant was accepted at the University of Medical Sciences in Havana. The applicant stated his belief that his UJC file was lost while he was in the military; although, if such were the case, he does not explain how he was allowed to attend the University of Medical Sciences even though he was not a documented member in the UJC. The applicant does not report whether or not he attended UJC meetings during this time. It was not until 2004 when he applied for an internship that questions arose regarding his membership in the UJC when his application for the internship was denied. Thus, to continue his pursuit of an internship and to avoid the threat of expulsion from the university, the applicant joined the UJC a second time. He emphasizes that he reestablished his membership in the UJC to be able to pursue a career in medicine and to avoid being treated like a second class citizen.

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[REDACTED] stated that he is the [REDACTED], an organization dedicated, in part, to assisting Cuban and other foreign physicians arriving in the United States to revalidate their medical degrees.

The applicant's characterization of his need to rejoin the UJC to be able to continue in his chosen career corresponds to Cuban country conditions; however, the applicant has not established that he rejoined the UJC in 2004 for basic employment, food rations, or other essentials of living. The applicant's reestablishment of his membership in the UJC in 2004 does not fall within the "involuntary" exception at section 212(a)(3)(D)(ii) of the Act. Similarly, the applicant's reestablishment of his membership a third time to obtain travel documents to leave Cuba in 2008 or 2009, was a voluntary act done to further his ability to defect; not primarily to obtain basic employment, food rations, or other essentials of living.

Counsel's asserts that the applicant's situation is similar to that of the respondent in *Matter of Mazur*, 10 I&N Dec. 79 (BIA 1962), where the Board of Immigration Appeals (BIA) found that the respondent's ten-year membership in the Communist Party of Yugoslavia (the Party) was involuntary because she joined the Party to save her life; her continued service was for the financial needs of her immediate family; she expressed no ideological sympathy with the Party and never held a position of political responsibility within the Party. Counsel claims that, like *Mazur*, the applicant joined the UJC "to ensure some sense of normalcy in his life within an oppressive regime" and that his "minimal involvement in the organization" to obtain life necessities rendered his membership involuntary. Counsel's claim is unpersuasive. The facts of the applicant's case, as explicated in his declarations, are clearly distinguishable from those in *Mazur*. In *Mazur*, the respondent's commanding officer in the National Liberation Army told her that her position required Party membership and a youth organization leader had previously warned her to cease her criticism of the Party and become a member lest she be killed. *Id.* at 82. While the record in this case indicates that without his UJC membership, the applicant would not have advanced his career to the same degree or been able to defect from Cuba, there is no indication that he faced the life-threatening circumstances of *Mazur* when he rejoined the UJC a second and third time.

*The Applicant had a Meaningful Association with the UJC*

In addition to the statutory exceptions,<sup>3</sup> the U.S. Supreme Court in 1954 determined that an alien's membership in the Communist Party would mandate his or her deportation only where the alien knew that the Party was a distinct and active political organization. *Galvan v Press*, 347 U.S. 522 (1954). In 1957 the Court found further that the statutorily enumerated exceptions were not to be construed narrowly and that if the alien's membership was wholly devoid of any political implications, it would be insufficient to support an order of deportation under the statutory scheme then in effect. *Rowoldt v. Perfetto*, 355 U.S. 115 (1957). In 1963 the Court further elaborated on *Galvan* and *Rowoldt* by determining that the "meaningful" character of an alien's association with the Communist Party could be demonstrated directly by showing that the alien "was, during the time of his membership, sensible to the Party's nature as a political

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<sup>3</sup> The 1951 corrective amendment to the 1950 Act provided that an alien who joined the Communist (or other totalitarian) Party, was not deportable if the alien joined: (1) as a child, (2) by operation of law, or (3) to obtain the necessities of life. Section 212(a)(28)(E), (I)(i) of the Act then in effect; 8 U.S.C.A. § 1182(a)(28)(E), (I)(i) (1951).

organization;” or “meaningful association” could be demonstrated indirectly by showing that the alien “engaged in Party activities to a degree substantially supporting an inference of his awareness of the Party’s political aspect.” *Gastelum-Quinones v. Kennedy*, 374 U.S. 469, 476-77 (1963). The meaningful association standard enunciated by the Supreme Court applies to adjustment of status proceedings. *Matter of Rusin*, 20 I&N Dec. 128 (BIA 1989).

By these standards, the applicant’s reentry into membership in the UJC in 2004 and 2008/2009 was meaningful. According to the applicant’s testimony, he knew that the UJC was a political organization controlled by the Cuban government. In his March 22, 2011 declaration, the applicant recounted his understanding that rejection of the UJC and the Communist Party would mark “a permanent red flag in [his] file kept by the government.” He recounted witnessing the repercussions of his father’s assistance to family members awaiting departure from Cuba on the Mariel boat lift and recalled his parents teaching him as a child never to “get into trouble with the government.” The applicant explained that he rejoined the UJC a second time in 2004 in order to avoid becoming “a second class citizen in Cuba” and that he rejoined the UJC a third time “to avoid stigmatization, problems with work, and to have the opportunity to go to Venezuela and defect to the U.S.” The applicant’s statements demonstrate that at the time of his second and third reentries into UJC membership, he was fully aware of the political nature of the organization and the protections and benefits such association would bring him.

Counsel claims that the applicant’s UJC membership was not meaningful, but passive, and that he only attended UJC meetings and participated in obligatory “volunteer work” of a non-political nature. Counsel asserts that the applicant’s UJC membership is analogous to those found to lack meaningful association by the Supreme Court in *Rowoldt* and by the BIA in *Matter of Pust*, 11 I&N Dec. 228 (BIA 1965). Again, the facts of those cases are clearly distinguishable from the applicant’s situation. In [REDACTED] the alien was a member of the Community Party for approximately one year and joined the Party because he believed the organization’s aim was “to get something to eat for the people.” 355 U.S. at 117. The alien testified that he worked at a Party bookstore, but was not compensated for his time. *Id.* In contrast, the applicant here was fully aware of the UJC’s political nature when he rejoined the organization a second and third time. The applicant’s UJC membership at those times was also obtained primarily to advance his career and secure his defection from Cuba.

The applicant’s circumstances are also distinct from those in *Pust*, where the respondent was a member of youth groups controlled by the Communist Party of Yugoslavia. 11 I&N Dec. at 229. The respondent’s membership was a condition of his school attendance, began when he was in grade school and the respondent lost his scholarship for a year when he was not a member of the high-school youth group. *Id.* at 229-30. The BIA held that the respondent’s membership was “passive and quiescent” and only to obtain an education, “an essential of living.” *Id.* at 233. The applicant’s situation is not analogous. At the time of his second and third reentries into the UJC, the applicant was an adult and he explained that his membership was to avoid becoming a “second class citizen,” to prevent “stigmatization” and problems at work, and to obtain the opportunity to defect. While the applicant may have only attended meetings, participated in non-political volunteer work and may have never held any leadership position within the UJC, his

membership was gained not simply to obtain an education or other life necessities, but to further advance his career and gain the opportunity to leave Cuba. The applicant's declarations clearly evidence his knowledge of the political nature of the UJC and the meaningful association of his second and third memberships in that organization.

*The Applicant's Parole was Not an Admission*

On certification, counsel further asserts that the government is barred from now finding the applicant inadmissible because it previously paroled him into the United States while aware of his past UJC membership. Counsel fails to acknowledge that parole is not an admission. Sections 101(a)(13)(B), 212(d)(5) of the Act, 8 U.S.C. §§ 1101(a)(13)(B), 1182(d)(5). The applicant was paroled into the United States under section 212(d)(5) of the Act, which permits parole despite inadmissibility. See *Matter of K-*, 9 I&N Dec. 143, 151 (BIA 1959) (explaining that section 212(d)(5) of the Act "contains the authority for parole but has nothing to do with the determination of admissibility or inadmissibility."). In contrast, the applicant now seeks adjustment of status under the CAA, which requires the alien to be "admissible to the United States for permanent residence." CAA § 1. While counsel asserts that it is "counterintuitive" for the government to parole the applicant into the United States only to render him inadmissible, counsel cites no statute or regulation that would permit USCIS to ignore the prescriptions of subsections 212(a)(3)(D)(i), (d)(5) of the Act and section 1 of the CAA.<sup>4</sup>

*Conclusion*

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 application to adjust status under section 1 of the CAA.

**ORDER:** The June 24, 2011 decision of the Kendall Field Office is affirmed. The application remains denied.

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<sup>4</sup> Counsel cites *Ramos v. Gonzales*, 414 F.3d 800 (7<sup>th</sup> Cir. 2005) and *In Re S-Y-G-*, 24 I & N Dec. 247 (BIA 2007) in support of his assertion that USCIS "should honor its prior determination under the same facts that [redacted] is admissible," but neither of these cases is on point. *Ramos v. Gonzales* only briefly mentioned a prior decision's establishment of "the law of the case with respect to venue" in a petition for review of a removal order. 414 F.3d at 803. *In Re S-Y-G-* simply noted that "the Immigration Judge's adverse credibility determination remain[ed] the law of the case" in the BIA's review of the respondent's motion to reopen her asylum claim. 24 I&N Dec. at 250. Counsel fails to articulate how either of these decisions is relevant to whether the inadmissibility bar at section 212(a)(3)(D) of the Act applies to the applicant in these proceedings.