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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

[redacted]

Date: FEB 09 2012 Office: ST. PAUL FIELD OFFICE [redacted]

IN RE: Applicant: [redacted]

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 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 St. Paul, Minnesota Field Office Director ("the director") denied the application, and certified her decision to the Administrative Appeals Office (AAO) for review. The director's decision shall be 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 Refugee Adjustment Act (CAA), Pub. Law No. 89-732 (Nov. 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 [Secretary of Homeland Security], 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[.]

The inadmissibility grounds of section 212 of the Immigration and Nationality Act ("the Act"), 8 U.S.C. §1182, apply to applicants for adjustment of status under section 1 of the CAA, with the exception of sections 212(a)(4), (a)(5) and (a)(7) of the Act. *See Matter of Mesa*, 12 I&N Dec. 432 (Dep. Assoc. Comm'r 1967). Section 212(a)(2)(A) of 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.

Regarding the ability to waive a ground of inadmissibility under section 212(a)(2)(A) of the Act, section 212(h) states, in pertinent part:

> The [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . if–
>
> (1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary of Homeland Security] that-
>
> (i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status.

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien[.]

The applicant is a native and citizen of Cuba who was paroled into the United States in 1980. The applicant has a criminal record that was adequately described in the director's decision, which includes a 10-year sentence of imprisonment in 1984 for violating section 940.23 of the Wisconsin Statutes (injury by conduct regardless of life). The applicant filed the instant application to adjust status (Form I-485) on January 27, 2010 as well as a waiver of his inadmissibility under section 212(h) of the Act (Form I-601). The director denied the Form I-485 and Form I-601 on September 22, 2011. In the Form I-485 denial decision that is the subject of this certification, the director determined that the applicant's 1984 conviction renders him inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, and his Form I-601 has been denied. The director certified her decision to the AAO for review and notified the applicant that he had 30 days to supplement the record with any evidence that he wished the AAO to consider. No additional evidence has been submitted to supplement the record.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant's 1984 criminal conviction in the State of Wisconsin is a crime involving moral turpitude and his Form I-601 has been denied.[1] Accordingly, the applicant is ineligible to adjust his status to that of a lawful permanent resident under section 1 of the CAA because he is inadmissible to the United States pursuant to 212(a)(2)(A)(i)(I) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility for the benefit he is seeking. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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

[1] There is no evidence that the applicant has appealed the denial of his Form I-601 waiver application.