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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: SEP 13 2012

Office: NEWARK

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF APPLICANT:

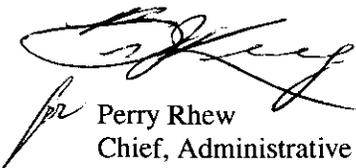
Self-represented

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 director's decision will be affirmed. The application remains 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), 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 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.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

- (i) [A]ny 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.

Section 212(h)(2) of the Act provides in pertinent part:

No waiver [of inadmissibility under section 212(a)(2)(A)(i)(I) due to a crime involving moral turpitude] shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder.... No court shall have jurisdiction to review a decision of the Attorney General [now the Secretary of Homeland Security, "Secretary"] to grant or deny a waiver under this subsection.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

....

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see

subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

- (1) The Secretary may, in the discretion of the Secretary, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Secretary that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

The applicant is a native and citizen of Cuba who was paroled into the United States on December 1, 2009. During his interview, the applicant signed a Form I-877, Record of Sworn Statement in Administrative Proceedings, indicating that he did not have any criminal record in Cuba. On or about December 26, 2010, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The applicant indicated on the Form I-485 to have no criminal record. At the time of his Form I-485 interview, the applicant disclosed an arrest and subsequent conviction in Cuba. The applicant indicated that he was a [REDACTED] in Camaguey, Cuba and on February 10, 1997, the train collided and 23 people died in the accident. The applicant indicated that he was convicted and received a sentence of twelve years of imprisonment. The applicant indicated that his sentence was reduced and he served six years and was paroled on November 27, 2003. A Request for Evidence was issued which advised the applicant to submit a police clearance letter from the state of New Jersey, certified records of his conviction from Cuba and copies of relevant criminal statutes from Cuba. The applicant, in response, provided the requested documents. The certified documentation from Cuba indicated that on August 18, 1997, the applicant was convicted in the Provincial Popular Court in Camaguey, Cuba of violating Article 184.1)a-b)c)-ch of the Cuban Penal Code (negligent homicide, injury and damage). The applicant received a ten-year sentence of imprisonment.

The director denied the application on February 29, 2012, determining that the applicant's August 18, 1997 conviction was a crime involving moral turpitude which rendered him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The director determined that the applicant was also inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresenting the fact that he had a criminal record in Cuba at the time of his interview on December 1, 2009. The director also determined that the applicant was ineligible to file a Form I-601, Application for a Waiver of Grounds of Inadmissibility, pursuant to sections 212(h) and 212(i) of the Act. 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 record is, therefore, considered complete.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The evidence in the record is sufficient to conclude that the applicant's 1997 criminal conviction in Cuba is a crime involving moral turpitude, and that he did willfully misrepresent a material fact, his criminal record, to procure entry into the United States.

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 sections 212(a)(2)(A)(i)(I) and 212(a)(6)(C) 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.