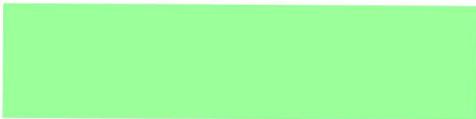


(b)(6)

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



U.S. Citizenship
and Immigration
Services



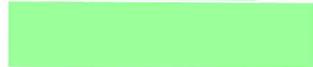
DATE:

JUN 06 2013

Office: NEWARK

FILE:

[Redacted]



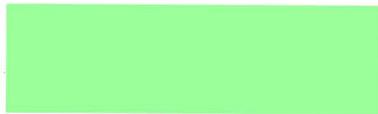
IN RE:

Applicant: [Redacted]

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting 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 AAO affirmed the director's decision to deny the application. The applicant has filed a motion to reopen and a motion to reconsider. The motion will be dismissed.

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 director denied the application on February 29, 2012, determining that the applicant's August 18, 1997 conviction in Cuba of negligent homicide, injury and damage 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 as he had no qualifying relatives. On September 13, 2012, the AAO, in affirming the director's decision, concluded that the evidence in the record was sufficient to conclude that the applicant's 1997 criminal conviction in Cuba was a crime involving moral turpitude, and that the applicant did willfully misrepresent a material fact, his criminal record, to procure entry into the United States.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that a motion to reopen or reconsider a proceeding must be filed within 30 days of the underlying decision, and that a motion to reopen must be filed within 30 days except that failure to file a motion during this period may be excused when the applicant has demonstrated that the delay was reasonable and beyond the control of the applicant.

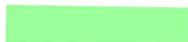
Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.8(b).

Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

The AAO rendered its decision on September 13, 2012. The envelope containing the motion was postmarked October 17, 2012, and it was received at the Phoenix Lockbox on October 18, 2012, 34 days after the date of the AAO's decision. The applicant has not demonstrated that the delay was reasonable and beyond his control.¹ The motion is untimely.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the motion to reopen was not filed within

¹ The AAO decision was sent to the applicant's address of record which he still maintains on motion.



the allotted time period. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion is dismissed. The previous decision of the AAO dated September 13, 2012, is affirmed. The application remains denied.