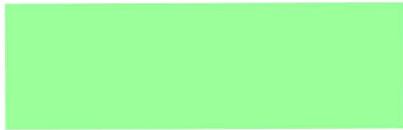




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 17 2013

Office: ORLANDO

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 OBLIGOR: Self-represented

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, Orlando, Florida, denied the application to adjust status and certified his 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 was paroled into the United States on or about December 29, 1995. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on October 4 2011. On July 9, 2012, the applicant filed a Form I-601, Application for Waiver of Ground of Inadmissibility.

The record of proceeding indicates that on or about:

1. [REDACTED] 1998, the applicant was arrested by the [REDACTED] Police Department (Florida) for petit larceny-theft, a misdemeanor. On [REDACTED] 2000, adjudication of guilt was withheld and the applicant was ordered to pay a fine. Case no. [REDACTED]
2. [REDACTED] 2000, the applicant was arrested under bench warrant [REDACTED] by the [REDACTED] Police Department (Florida) for petit larceny-theft. This arrest relates to number one above.
3. [REDACTED] 2004, the applicant was arrested by the [REDACTED] Police Department (Florida) for grand theft in the 3rd degree. On [REDACTED] 2005, a *nolle prosequi* was entered for this offense. Case no. [REDACTED]
4. [REDACTED], 2005, the applicant was arrested by the [REDACTED] Police Department (Florida) for petit larceny-theft, a misdemeanor. On [REDACTED], 2005, adjudication of guilt was withheld and the applicant was ordered to pay a fine. Case no. [REDACTED]
5. [REDACTED] 2005, the applicant was arrested by the [REDACTED] Police Department (Georgia) for theft by shoplifting. On [REDACTED] 2006, the applicant pled *nolo contendere* to this misdemeanor offense. The applicant was ordered to pay a fine, perform 40 hours of community service in Miami, Florida and was sentenced to 12 months in the [REDACTED] County jail. The applicant was credited with time served (2 days) and the remainder of the sentence to be served on probation. Case no. [REDACTED]
6. [REDACTED] 2010, the applicant was arrested by the [REDACTED] Sheriff's Office (Florida) for petit theft in the 1st degree. On [REDACTED] 2010, the applicant pled *nolo contendere* to violating this misdemeanor offense. The applicant was sentenced to

time served and was ordered to pay a fine and court cost. Case no. [REDACTED]

Adjustment of status is a matter of administrative grace, not mere statutory eligibility. *Matter of Marques*, 16 I. & N. Dec. 314, 315 (BIA 1977). The applicant has the burden of demonstrating that discretion should be exercised in his favor. *Matter of Patel*, 17 I. & N. Dec. 597, 601 (BIA 1980); see also *Matter of Leung*, 16 I. & N. Dec. 12 (BIA 1976), *Matter of Arai*, 13 I. & N. Dec. 494 (BIA 1970).

On November 3, 2012, the director denied the Form I-485 and Form I-601.¹ The director, in considering all the facts, including but not limited to the applicant's family ties, determined that the applicant did not merit, as a matter of discretion, adjustment of status in the United States. The director determined that the applicant had demonstrated and established a pattern of lack of adherence to the laws of Florida and Georgia and had illustrated disrespect and disregard for the laws of the United States and well-being of property. The director certified his decision to the AAO for review and notified the applicant that she had 30 days to supplement the record with any evidence that she 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 AAO concurs with the director's finding that the applicant does not warrant a favorable exercise of discretion based on her criminal record. In proceedings for adjustment of status under section 1 of the CAA the burden of establishing that the application merits approval remains with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the field office director's decision to deny the application as a matter of discretion will be affirmed.

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

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