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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:

SEP 05 2013

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 OBLIGOR: Self-represented

INSTRUCTIONS:

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

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Newark, New Jersey, 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 Immigration and Nationality Act (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.

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

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.

The applicant was paroled into the United States on or about April 1, 1980. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on September 20, 2011. On July 1, 2013, the applicant filed a Form I-601, Application for Waiver of Ground of Inadmissibility.

The record of proceedings reflects 18 arrests and/or convictions relating to the applicant from 1986 through 2002. Only those convictions which may render the applicant inadmissible to the United States are addressed below:

On September 21, 1988, the applicant was arrested by the Union City Police Department of New Jersey and subsequently charged with three counts of burglary, three counts of terroristic threats, one count of burglary in the third degree, four counts of aggravated assault, one count of weapon possession for unlawful purpose and one count of unlicensed possession of a weapon. On May 22, 1989, in the ██████████ County Superior Court, the applicant pled guilty to one count of aggravated assault, a violation of N.J.S.A. § 2C:12-1b(1). On June 7, 1989, the applicant was sentenced to credit time served (275 days), ordered to pay a fine of \$1000 and was placed on probation for five years. Indictment no. ██████████ The remaining charges were dismissed.

N.J.S.A. § 2C:12-1b states, in pertinent part:

Aggravated Assault. A person is guilty of aggravated assault if he . . . (1) [a]ttempts to cause serious bodily injury to another, *or* causes such injury purposely or knowingly *or* under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury. (Emphasis added)

On December 19, 2002, the applicant was arrested by ██████████ Police Department of New Jersey and subsequently charged with simple assault, possession of false identification, using false identification and hinder apprehension. On February 24, 2003, in the ██████████ County Superior Court, the applicant was convicted of violating N.J.S.A. § 2C:21-2.1(c), sale of simulated document. The applicant was placed on probation for three years and ordered to pay a fine of \$155. Indictment no. ██████████ The remaining charges were dismissed.

N.J.S.A § 2C:21-2.1c states:

A person who knowingly exhibits, displays or utters a document or other writing which falsely purports to be a driver's license, birth certificate, or other document issued by a government agency and which could be used as a means of verifying a

person's identity or age or any other personal identifying information is guilty of a crime of the third degree.

On August 12, 2013, the director denied the Forms I-485 and I-601.<sup>1</sup> The director found the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for his 1989 and 2003 convictions which were crimes involving moral turpitude and did not meet the criteria for a waiver under section 212(h) 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 considered complete.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because all three prongs of aggravated assault under N.J. Stat. § 2C:12-1b(1) encompass conduct involving moral turpitude, it is categorically a crime involving moral turpitude. The AAO also concludes that the minimum conduct necessary for a conviction under N.J.S.A. § 2C:21-2.1(c), in that it impairs the important government function of issuing identification documents that are used to establish identity, involves a fraudulent intent and thus involves moral turpitude. Therefore, we uphold the director's finding that the applicant's convictions under N.J. Stat. § 2C:12-1b(1) and N.J.S.A. § 2C:21-2.1(c) constitute crimes involving moral turpitude.

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.

Pursuant to section 291 of the 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 applicant's application to adjust status pursuant to section 1 of the CAA.

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

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<sup>1</sup> There is no evidence that the applicant has appealed the denial of his Form I-601.