

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
U.S. Immigration and Citizenship Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



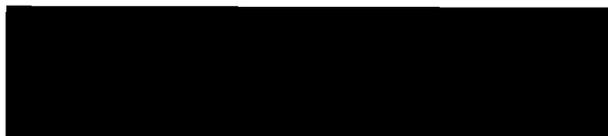
*hr*

FILE: [REDACTED] Office: MIAMI, FLORIDA Date: **MAY 10 2010**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:



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 \$585. 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,

*Michael Shumway*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Cuba who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so as to immigrate to the United States. The director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, based on his finding that the Form I-601 was filed after the denial of the Form I-485, Application to Register Permanent Residence or Adjust Status, so the applicant no longer had a pending Form I-485 on which to base the waiver application. *Decision of the District Director, dated September 6, 2007.*

On appeal, counsel contends that the applicant entered the United States as a political refugee on August 11, 1997, and filed the Form I-485, Application to Register Permanent Residence or Adjust Status, in 1998. He states that the applicant entered a guilty plea and was convicted of "computer services certain uses prohibited" in Florida. He conveys that the applicant had an adjustment of status interview in 2005, and submitted the section 212(h) waiver application on July 28, 2007. Counsel states the waiver application was denied on September 6, 2007, because the applicant's adjustment application was previously denied on January 30, 2007. Counsel contends that neither his office nor the applicant received the denial letter for the adjustment application and because of this the applicant was not afforded due process and his waiver application was never considered on its merits. Counsel requests that the appeal of the Form I-601 be considered on its merits as the applicant paid the filing fee. Counsel contends that the applicant's parents would experience extreme hardship if he is removed to Cuba.

The AAO concurs with the director's denial of the applicant's waiver application on the ground that the applicant no longer had a pending adjustment application that served as the basis for the Form I-601. The record reflects the following events. The applicant was admitted to the United States as a refugee on August 21, 1997. The applicant filed the Form I-485 on August 24, 1998, which was denied on April 12, 2000 due to failure to submit requested documentation. On June 12, 2000, the applicant submitted a second Form I-485. On May 7, 2001, he submitted a third Form I-485. On November 15, 2001, the applicant pled guilty to and was found guilty of "computer services/certain uses prohibited in violation of Florida Statutes 847.0135(3). On September 23, 2005, the applicant attended his adjustment interview. In October 2005, the applicant submitted the Form I-602, Application by Refugee for Waiver of Grounds of Excludability. The Form I-602 and the second and third adjustment applications were all denied on September 2, 2006. On January 1, 2007, the letter denying the adjustment applications was mailed to the address provided by the applicant on the two adjustment applications. The adjustment of status denial letter indicated that the Form I-602 was denied as a matter of discretion, and the adjustment applications were concurrently denied. On July 28, 2007, the applicant filed the Form I-601 in the instant case. On September 6, 2007, the director correctly denied the Form I-601 because the applicant no longer had a pending adjustment application.

8 C.F.R. § 212.7(a)(1)(i) and (ii) provides:

Sec. 212.7 Waiver of certain grounds of inadmissibility.

(a) General--(1) Filing procedure--(i) Immigrant visa or K nonimmigrant visa applicant. An applicant for an immigrant visa or "K" nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

(ii) Adjustment of status applicant. An applicant for adjustment of status who is excludable and seeks a waiver under section 212(h) or (i) of the Act shall file an application on Form I-601 with the director or immigration judge considering the application for adjustment of status.

The regulation at 8 C.F.R. § 212.7(a)(1)(ii) conveys that an adjustment of status applicant who seeks a waiver under section 212(h) or (i) of the Act must file the Form I-601 waiver with the director or immigration judge considering the application for adjustment of status. In the instant case, the record reveals that the applicant's applications for adjustment of status were denied before the filing of the Form I-601 waiver. We find that the director was therefore correct in denying the Form I-601, as the applicant was no longer an applicant for adjustment of status at the time he filed the Form I-601 application.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.