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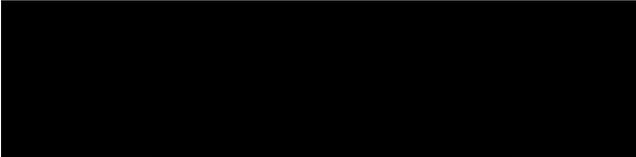
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: ORLANDO FIELD OFFICE

Date:

FEB 24 2010

SRC 04 084 50857

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Orlando, Florida, who certified her decision to the Administrative Appeals Office (AAO) for review. The field office director's decision will be affirmed. The application will be 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) of November 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.

A review of the record reveals the following facts and procedural history: On the Form I-485, the applicant indicates that he last arrived in the United States on May 4, 1980 at West Palm Beach, Florida. The Form I-485 that is the subject of this certification was filed on January 30, 2004. The record includes evidence of numerous arrests and convictions relating to drug possession and misdemeanors relating to battery and shoplifting beginning in August 1981 and continuing until July 7, 2000. The applicant's arrests and convictions noted in the record include:

An arrest in Atlantic City, New Jersey for violation of NJ 2421-20A4 - possession of marijuana on August 17, 1981 with an October 16, 1981 disposition of guilty and an assessed fine of \$125.00;

An arrest in Atlantic City, New Jersey for violation of NJ 2421-20A4 - possession of marijuana on September 15, 1981 with a disposition of guilty on the same date and confinement of one day;

An arrest on July 11, 1990 in Atlantic City, New Jersey on several charges and a disposition of guilty for violation of NJ2C35 – 10A1 – felony conviction of cocaine possession on August 30, 1990 and a sentence of five years of probation and the suspension of a driver's license for six months;

An arrest on May 4, 1991 in Atlantic City, New Jersey for marijuana and cocaine possession wherein the disposition for the charges is unavailable;

An arrest on July 12, 1991 in Orange County, Florida for the purchase of marijuana in violation of FL893.13 and a disposition of guilty on December 11, 1991, and a sentence of two days in jail and two years probation;

An arrest on April 4, 1994 in Orange County, Florida for battery in violation of FL784.03 and a disposition of guilty on June 16, 1994 and a sentence of 20 days in jail;

An arrest in Orange County, Florida for shoplifting on August 30, 1995 in violation of FL812.014 and for resisting an officer in violation of FL843.02 with a disposition of guilty of theft and of resisting an officer without violence on August 31, 1995 and a sentence of two days in jail;

An arrest in Orlando, Florida for narcotic equipment possession in violation of FL893.147 on April 2, 1998 and a disposition of guilty on April 3, 1998 and a sentence of one month in jail;

An arrest on September 10, 1998 in Orlando, Florida for narcotic equipment possession in violation of FL893.147 and a disposition of guilty on September 11, 1998 and a sentence of one month in jail;

An arrest on January 9, 1999 in Orlando, Florida for possession of an open container and for narcotic equipment possession in violation of FL893.147 and a disposition of guilty on the possession and use of drug paraphernalia charge on January 12, 1999 and a sentence of 15 days in jail;

An arrest on April 13, 1999 in Orlando, Florida for narcotic equipment possession in violation of FL893.147 and a disposition of guilty on April 14, 1999 and a sentence of two days in jail; and,

An arrest on June 9, 2000 in Orlando, Florida for narcotic equipment possession in violation of FL893.147 and for possession of an open container and a disposition of guilty on narcotic equipment possession and drug equipment paraphernalia charge on July 13, 2000 and a sentence of five months and 28 days in jail.

The record includes information from the City of Orlando Police Department indicating that the underlying court records on many of the above charges have been purged.

In a May 18, 2009 decision, the director determined that the applicant was not eligible for adjustment of status because his criminal history made him inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) and (II) of the Immigration and Nationality Act (the Act). The director denied the application and certified her decision to the AAO for review. The director informed the applicant that he had 30 days to supplement the record with any evidence that he wished the AAO to consider. The applicant did not provide further information. Thus, the record is considered complete.

Section 212(a)(2)(A) of the Immigration and Nationality Act (INA) states, in pertinent part:

(i) In general.-Except as provided in clause (ii), any 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, or

- (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

The AAO finds that the applicant's convictions make him inadmissible under section 212(a)(2)(A)(i)(II) of the INA (controlled substance violation). There is no waiver of inadmissibility available to the applicant. Pursuant to section 291 of the Immigration and Nationality 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 is denied.