U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

A2

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: JAN 13 2005

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 PETITIONER:

[redacted]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The District Director's decision will be affirmed.

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.

The District Director found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. *See District Director's Decision* dated June 5, 2004.

Section 212(a)(2) of the Act states in pertinent part, that:

> (A)(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) of the Act provides, in pertinent part, that:

> (h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . . .
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> (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

The record reflects that on December 12, 1996, in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida the applicant was convicted for the offense of aggravated battery. The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act due to his conviction of a crime involving moral turpitude.

As stated above section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, United States citizen or lawfully resident spouse, parent, son, or daughter.

On December 13, 1999, the applicant submitted a Form I-601, Application for Waiver of Grounds of Excludability, along with the appropriate fee in an attempt to explain how his deportation may result in extreme hardship to his qualifying relative. The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See District Director Decision* dated April 15, 2002. An appeal filed with the AAO was dismissed on November 12, 2002.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. The applicant submits a statement in which he states that although he was convicted of aggravated battery he never served time in jail but was on probation that he completed successfully. In addition he states that he has two U.S. citizen children who would suffer extreme hardship if he is not be able to become a resident of the United States. Finally the applicant states that he paid his price to society and he submits a copy of his criminal record and the birth certificates of his children.

The record of proceedings in this case is for the certification of the denial of the application for adjustment of status and therefore the AAO will not discuss whether the applicant's children would suffer extreme hardship if the application is not granted. A final decision regarding the applicant's Form I-601 was issued on November 12, 2002. The applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act and therefore he does not qualify for adjustment of status under section 1 of the CAA of November 2, 1966.

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. He has failed to meet that burden. The decision of the District Director to deny the application for adjustment of status will be affirmed.

ORDER: The District Director's decision is affirmed.