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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

A2

FILE: [redacted] Office: MIAMI, FLORIDA Date: JAN 18 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: SELF-REPRESENTED

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 sections 212(a)(2)(A)(i)(I), 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), § 1182(a)(2)(A)(i)(II) and § 1182(a)(2)(C). The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See District Director's Decision* dated June 29, 2004.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. No additional evidence has been entered into the record.

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, 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).
>
> . . . .
>
> (C) Controlled substance traffickers.-
>
> any aliens who the consular officer of the Attorney General knows or has reasons to believe-
>
> > (i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder

> with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or.....is inadmissible.

The record reflects that the applicant has a long history of criminal activities and specifically the following convictions:

September 6, 1985, in the United States District court, Southern District of Florida, the applicant was convicted of possession of marijuana with intent to distribute and was sentenced to 42 months imprisonment followed by five years probation.

August 25, 1998, in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, the applicant was convicted of three felony counts of aggravated assault with a deadly weapon and one misdemeanor count of battery. He was placed on probation for eighteen months.

The applicant is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, based on his conviction of a crime involving moral turpitude and sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act, based on his conviction for possession of marijuana with intent to distribute.

There is no waiver available to an alien found inadmissible under section 212(a)(2)(A)(i)(II) of the Act, except for a single offense of simple possession of thirty grams or less of marijuana. The applicant does not qualify under this exception. In addition there is no waiver available to an alien found inadmissible under section 212(a)(2)(C) of the Act.

The applicant is ineligible for adjustment of status to permanent residence, pursuant to section 1 of the CAA of November 2, 1966. The decision of the District Director to deny the application will be affirmed.

ORDER: The District Director's decision is affirmed.