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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

PUBLIC COPY

[redacted]

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MAY 06 2005

FILE: [redacted] Office: NEWARK, NEW JERSEY Date:

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 APPLICANT:

[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, Newark, New Jersey, who certified her 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 an 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) for attempting to procure admission into the United States by fraud and willful misrepresentation of a material fact. The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See District Director's Decision* dated September 13, 2004.

The record of proceedings reveals that the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601), pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) on June 11, 2001. The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See District Director's Decision* dated July 22, 2003. The decision was affirmed by the AAO on appeal. *See AAO's Decision,* dated July 29, 2004. No motion to reopen or reconsider the waiver application has been filed with the AAO.

On certification counsel presents the same arguments he presented on appeal of the denial of the Form I-601. These issues were thoroughly discussed in the AAO decision of July 29, 2004, which was sent to counsel as well as to the applicant. The AAO will not repeat that discussion in these proceedings. The proceeding in the present case is for the certification of the denial of the application for permanent residence status under section 1 of the CAA of November 2, 1966. The applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act and a waiver application pursuant to section 212(i) of the Act was denied. The applicant is not eligible 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.