



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

FILE: [REDACTED]

Office: Miami

Date: MAR - 7 2001

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)

IN BEHALF OF APPLICANT:

[REDACTED]

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Acting Director
Administrative Appeals Office

[REDACTED]

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, 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 of November 2, 1966. This Act provides for the adjustment of 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, to that of an alien lawfully admitted for permanent residence if 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) and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I) and 1182(a)(2)(C). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(2) of the Act, 8 U.S.C. 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

(A)(i) 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).

(C) Any alien who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

The record reflects the following:

1. On July 24, 1990, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was indicted for Count 1, grand theft-third degree; and Count 2, dealing in stolen property. On February 19, 1991, the applicant was found guilty of Count 1, adjudication of guilt was withheld, he was placed on probation for a period of 5 years, and assessed a total of \$450 in fine and costs. Count 2 was dismissed.

2. On January 19, 1990, in Dade County, Florida, Case No. [REDACTED] the applicant, under the name of [REDACTED] or [REDACTED] was arrested and charged with grand theft. On February 9, 1990, a "no information" was entered on the case.

3. On March 16, 1983, in Miami, Florida, the applicant was arrested and charged with Count 1, sale of a controlled substance (250 pounds of marijuana); Count 2, possession of a controlled substance (marijuana); Count 3, trafficking in marijuana; and Count 4, conspiracy to traffic. The arrest report reflects that the applicant negotiated and purchased approximately 250 pounds of marijuana from 2 undercover officers for \$50,000 U.S. dollars. On April 5, 1983, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant and 4 co-defendants were indicted for trafficking in cannabis (in excess of 100 pounds but less than 2,000 pounds). Based on the applicant's motion to dismiss the information, on September 11, 1985, the court granted the motion to dismiss Count 2. However, the motion to dismiss Count 1 was denied. On September 22, 1988, the court again granted the applicant's motion to dismiss the information and case, and ordered the case dismissed.

4. On June 15, 1983, in Miami, Florida, the applicant was arrested and charged with Count 1, conspiracy to traffic marijuana (208 pounds); Count 2, trafficking in marijuana; and Count 3, possession of marijuana. The arrest report reflects that an undercover officer, the defendant (applicant), and a co-defendant negotiated, sold and delivered to the defendant and co-defendant 208 pounds of marijuana for \$78,500 in U.S. currency. The exchange took place at the Precision Work Corporation. On June 28, 1983, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was indicted for trafficking in cannabis (in excess of 100 pounds but less than 2,000 pounds). Based on the applicant's motion to dismiss the information, the court granted the motion and dismissed the information on January 28, 1985. On May 2, 1986, an indictment was refiled charging the applicant with Count 1, conspiracy to traffic in cannabis, and Count 2, attempted trafficking in cannabis. On October 7, 1988, the court dismissed the information based on another motion to dismiss filed by the applicant.

5. On June 7, 1982, in Dade County, Florida, Case No. [REDACTED], the applicant was arrested and charged with Count 1,

principal in first degree-carrying a concealed firearm. The case was subsequently transferred to the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, under Case No. [REDACTED]. On September 23, 1988, the applicant entered a plea of guilty to carrying a concealed firearm (revolver). He was adjudged guilty of the charge, imposition of sentence was withheld, he was placed in a Community Control Program for a period of 18 months, and ordered to perform 200 hours of public service work.

Grand theft is a crime involving moral turpitude (paragraph 1 above). Matter of Chen, 10 I&N Dec. 671 (BIA 1964); Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974). The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act.

Additionally, despite the fact that the applicant was not convicted of the charges in paragraphs 3 and 4 above, and that the court subsequently dismissed the case, the district director, citing Matter of Rico, 16 I&N Dec. 181 (BIA 1977), and Matter of Tillighast, 27 F.2d 580 (1st Cir., 1928), determined that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act because he had reason to believe the applicant is or has been an illicit trafficker in a controlled substance.

Based on the large amount of controlled substance and currency negotiated by the applicant, the co-defendants, and undercover officers in two separate occasions (paragraphs 3 and 4 above), it is concluded that there is sufficient, reasonable, substantial, and probative evidence to support the district director's conclusion that there was reason to believe the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing assistor, abettor, conspirator, or colluder in the illicit trafficking in a controlled substance. The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act, whether or not he was actually convicted. Matter of Rico, supra.

There is no waiver available to an alien found inadmissible under section 212(a)(2)(C) of the Act based on trafficking in a controlled substance. The applicant is, therefore, ineligible for adjustment of status to permanent residence pursuant to section 1 of the Act 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.