



Ad

U.S. Department of Justice
Immigration and Naturalization Service

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



Public Copy

MAR - 8 2001

FILE: [Redacted]

Office: Miami

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)

IN BEHALF OF APPLICANT:



Identification 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

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 section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 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.

Pursuant to section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(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 to the United States.

The record reflects that on January 23, 1996, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was indicted for (1) sale, manufacture, or delivery of cocaine; (2) possession of cocaine; (3) purchase or possession with intent to purchase cocaine; and (4) possession of cocaine. On August 27, 1996, a nolle pros was entered on the case, and on March 11, 1997, the court ordered the records in this case sealed.

Despite the fact that the applicant was not convicted of the charges and the court subsequently sealed the arrest or criminal records for the charges listed above, 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 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.

The district director based his conclusion on the police report dated January 2, 1996, which reflects that the arresting officer observed the applicant and the co-defendant having a brief conversation, the co-defendant handed the applicant a U.S. currency, the applicant went to the bushes where he had a clear plastic bag with numerous cocaine rocks, and the applicant handed the co-defendant one of the items from the bag. The defendants were then stopped and narcotics were recovered.

United States v. Washington, 586 F.2d 1147, 1153 (7th Cir. 1978), held that proof of possession of a small amount of a controlled substance, standing alone, is an insufficient basis from which an intent to distribute may be inferred. However, in the matter at hand, the police arrest report specifically stated that the applicant actually sold cocaine. That overt action of actually selling a quantity of cocaine, whatever the amount, goes well beyond mere possession of a small amount. Such an action 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 drug 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.

Although the court entered a "nolle pros" on the case and subsequently ordered the sealing of the records, the effect of the sealing of the records is not to eliminate the commission of the crime, but to remove the documents from the public record.

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 this section based on trafficking in a controlled substance. Further, the applicant was offered an opportunity to submit evidence in opposition to the district director's findings of inadmissibility. No additional evidence has been entered into the record of proceeding.

The applicant is 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.