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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

FILE: [Redacted]

Office: Miami

Date: MAR 13 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: Self-represented

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 case will be remanded to the district director for further action.

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)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(II). He noted that the applicant failed to appear for a scheduled interview on April 11, 2000, and to submit an application for waiver of grounds of inadmissibility (Form I-601). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

In response to the notice of certification, the applicant asserts that he was not able to appear for the scheduled interview because he was hospitalized on that date, and that he sent someone else in his place to file the waiver application with fee. He submits a letter from his doctor and a copy of a money order to support his assertion. The applicant expresses remorse for his past behavior and states that the incident occurred 14 years ago.

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 --

(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).

The record reflects that on April 25, 1986, in Miami, Florida, Case No. 86-60456, the applicant was arrested and charged with possession of a controlled substance, marijuana. On May 19, 1986,

the applicant entered a plea of guilty to the charge, he was found guilty, adjudication of guilt was withheld, and he was fined \$50.

The applicant is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on his conviction of possession of marijuana. However, as provided in section 212(h) of the Act, 8 U.S.C. 1182(h), a waiver of grounds of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act is available to an alien convicted of a single offense of simple possession of 30 grams or less of marijuana. The record reflects that the amount of marijuana found on the applicant was less than 30 grams. The record further reflects that a Form I-601 waiver application was filed with the Service.

The case will, therefore, be remanded in order that the district director may adjudicate the application for waiver of grounds of inadmissibility. The district director shall enter a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner, Examinations, for review.

ORDER: The district director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.