



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

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 clearing 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 statute 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 pursuant to section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(C), because he had reason to believe that the applicant is or has been an illicit trafficker in a controlled substance. The 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 certification.

Pursuant to section 212(a)(2)(C) of the Act, 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 the following:

1. On May 1, 1984, in Dade County, Florida, the applicant was arrested and charged with possession of marijuana (approximately 1691 grams). On May 21, 1984, a "no action" was entered on the case.

2. On January 8, 1987, in Miami, Florida, the applicant was arrested and charged with drinking in public and possession of cocaine. On September 22, 1987, a nolle pros was entered on the case.

3. On March 25, 1989, in Miami, Florida, the applicant was arrested and charged with armed robbery. On April 17, 1989, a "no action" was entered on the case.

Despite the fact that the applicant was not convicted of the charges listed in paragraphs 1 and 2 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 May 1, 1984 which reflects that on April 27, 1984, a co-defendant sold the officer one gram of cocaine for \$80, and again on April 30, 1984, he sold the officer 1/2 gram of cocaine for \$40. The report shows that the applicant was present during the sale. On May 1, 1984, a search was conducted at the home of the applicant and the co-defendant, and approximately 1,691 grams of marijuana and \$1,102 in U.S. currency were impounded from the applicant's bedroom. In addition, 2 hand guns were also found in the same bedroom.

It has been held in Matter of Rico, *supra*, that an actual conviction of a drug-trafficking offense or violation is not necessary to establish the ground of inadmissibility under section 212(a)(2)(C) of the Act. There are sufficient facts to support a finding that there is reason to believe the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder in the illicit trafficking in a controlled substance.

The intent to distribute a controlled substance has been inferred solely from possession of a large quantity of the substance. United States v. Koua Thao, 712 F.2d 369 (8th Cir. 1983) (154.74 grams of opium); United States v. DeLeon, 641 F.2d 330 (5th Cir. 1980) (294 grams of cocaine); United States v. Grayson, 625 F.2d 66 (5th Cir. 1980) (413.1 grams of 74% pure cocaine); United States v. Love, 559 F.2d 107 (5th Cir. 1979) (26 pounds of marijuana); United States v. Muckenthaler, 584 F.2d 240 (8th Cir. 1978) (147 grams of cocaine).

Generally speaking, intent to distribute is established when the controlled substance is either found on the person of the accused, or in a vehicle or boat driven or occupied by the accused, or in a dwelling where the accused resided or visited frequently. It was held in United States v. Franklin, 728 F.2d 994 (8th Cir., 1984), that intent to distribute may be established by circumstantial evidence. Evidence the applicant possessed a controlled substance with the requisite intent to distribute is sufficient as a matter of law, where the controlled substance is packaged in a manner consistent with distribution and/or there is evidence of paraphernalia, amount of cash, weapons, or other indicia of narcotics distribution. The arrest in conjunction with the charges in paragraph 1 above, the circumstances surrounding the arrest, the fact that the controlled substance, cash, and weapons were found in the applicant's bedroom, and the fact that the applicant was again

arrested on January 8, 1987 for possession of cocaine, are sufficient factors 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.

Although the record in this matter indicates that the applicant was not convicted of possession of marijuana and possession of cocaine (paragraph 1 and 2 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 assister, 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 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.