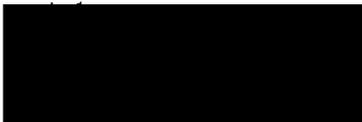




AD

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



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

INSTRUCTIONS:

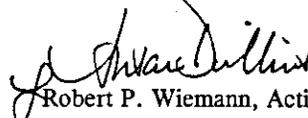
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 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 because he falls within the purview of sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(II) 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 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 --

(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 18, 1997, in Collier County, Naples, Florida, Case No. [REDACTED], the applicant was arrested and charged with Count 1, trafficking in cocaine; and Count 2, possession of narcotic

paraphernalia. On January 19, 1999, the applicant was found guilty of the amended offense of possession of a controlled substance in Count 1, adjudication of guilt was withheld, he was placed on probation for a period of 5 years, and assessed a total of \$255 in costs. A "no information" was entered as to Count 2.

The police report in this case reflects that a search was conducted at the applicant's residence on July 18, 1997. The applicant cooperated and showed the officers cocaine that was hidden in one of his jackets. Also located was a triple beam scale used to weigh the cocaine. Approximately 2 ounces of cocaine was recovered.

2. On July 12, 1985, in Miami, Florida, Case No. [REDACTED] the applicant was arrested and charged with Count 1, 2 counts of possession of a controlled substance (cocaine); and Count 2, 2 counts of sale of a controlled substance (cocaine). On August 16, 1985, a "no action" was entered on the case. Although the applicant was not convicted of these charges, the applicant subsequently filed a petition to expunge his criminal record. On April 12, 1995, the court ordered all information concerning indicia of arrest or criminal history information regarding the applicant expunged.

The police report dated July 12, 1985, reflects that on two separate occasions, the applicant sold to an undercover agent 2 small plastic bags containing approximately one gram of cocaine for \$100.

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 a controlled substance (paragraph 1 above).

Although the applicant was not convicted of trafficking in cocaine (paragraph 1 above) and sale of cocaine (paragraph 2 above), the district director also found the applicant 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. It has been held in Matter of Rico, 16 I&N Dec. 181 (BIA 1977), 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.

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 paragraph 2 above, the police arrest report reflects that on two separate occasions, the applicant actually sold cocaine to an undercover agent. That overt action of actually selling a controlled substance, whatever the amount, goes well beyond mere possession of

a small amount. Further, although the applicant was not convicted of these charges, the applicant subsequently filed a petition to expunge his criminal record. Approximately 10 years later, on April 12, 1995, the court ordered all information concerning indicia of arrest or criminal history information regarding the applicant expunged. An expungement of a drug-related conviction, however, will not eliminate the convictions for immigration purposes. See Matter of Ozkok, 19 I&N Dec. 546 (BIA 1988); See also Matter of A-F-, 8 I&N Dec. 429 (BIA, A.G. 1959).

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 and a triple beam scale used to weigh the cocaine were found in the applicant's home, and the fact that the applicant had a previous arrest for trafficking in a controlled substance on July 12, 1985, 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 or is or has been a knowing assister, abettor, conspirator, or colluder in the illicit trafficking in a controlled substance.

Therefore, the applicant is also 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 resident pursuant to section 1 of the Act of November 2, 1966. The decision of the district director will be affirmed.

ORDER: The district director's decision is affirmed.