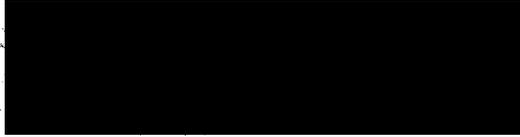




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U.S. Department of Justice
Immigration and Naturalization Service

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



23 AUG 2002

FILE:

Office: Miami

Date:

IN RE: Applicant:

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:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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, 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 Associate Commissioner affirmed the decision of the district director to deny the application. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted and the previous decision of the Associate Commissioner 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.

The district director denied the application after determining that the applicant was inadmissible to the United States because she fell 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).

The Associate Commissioner reviewed the record of proceeding and concurred with the district director's conclusion that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on her conviction of possession of a controlled substance (cocaine) for which no waiver is available. He, therefore, affirmed the district director's decision on January 17, 2002.

On motion, counsel submits a copy of an order of the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, dated August 17, 2001, vacating the applicant's conviction of possession of cocaine, under Case No. [REDACTED] and entering a "nolle pros" on the case. Counsel asserts that the applicant is eligible for adjustment of status because she no longer has a conviction.

Counsel submitted the court order vacating the prior judgment; however, she neglected to submit the petition/motion to vacate which would show the exact reason for dismissal of the case. If such vacation was an expungement, it should be noted that an expungement of drug-related convictions 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). The Attorney General, in Matter of A-F-, also examined the effect of expunction procedures on convictions for narcotics offenses, concluding that Congress did not intend for a narcotics violator to escape deportation as a result of a technical erasure of his conviction by a state. In so finding, the Attorney General noted the federal policy to treat narcotics offenses seriously and determined that it would be inappropriate for an alien's deportability for criminal activity to be dependent upon "the vagaries of state law."



The applicant, therefore, remains inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act. The previous decision of the Associate Commissioner will be affirmed.

ORDER: The decision of the Associate Commissioner dated January 17, 2002, is affirmed.