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U.S. Department of Justice

Immigration and Naturalization Service

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

FILE [Redacted]

Office: Texas Service Center

Date: **AUG 27 2002**

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:



**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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center, 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 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 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.

In response to the notice of certification, counsel asserts that the charges for violating 21 U.S.C. 841(a)(1), possession with intent to distribute marijuana, were dropped as reflected in the Order of Dismissal dated March 20, 1984. He states that all through the investigative process and in his Service interview, the applicant asserted the fact that he had absolutely no involvement in the marijuana possession charge. Counsel further asserts that it has been factually established that the applicant did not, in any way, knowingly participate in any crime whatsoever and he being the rightful owner of said vehicle that was unlawfully forfeited by the U.S. Department of Treasury, was entitled to the remission of same, an act the government failed to do.

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 that on February 21, 1984, a Criminal Complaint was filed with the United States District Court, Southern District of Florida, under Docket No. [REDACTED] charging the applicant with violation of 21 U.S.C. 841(a)(1), possession with the intent to distribute marijuana. The complaint indicates that the three defendants (including the applicant) were observed by two officers

loading a boat onto a trailer from the waters at Crandon Park, Key Biscayne. One officer followed the three defendants and together with his partner stopped the defendants, boarded the boat and conducted a customs search. The officers observed through a crack in the fiberglass inside the boat a number of plastic bags. Through a hole in one of the bags, a green leafy substance was observed and field-tested positive for marijuana. Six plastic bags were found concealed behind the fiberglass wall. On March 20, 1984, the U.S. Attorney for the Southern District of Florida dismissed the complaint against the applicant.

In a notice dated March 7, 1984, from the Department of Treasury, U.S. Customs Service, the applicant was informed that the property (1978 Allmand vessel, trailer and equipment, and a 1976 Oldsmobile Cutlass Sedan vehicle) had been seized for violating 19 U.S.C. 1595a(a), aiding in the unlawful importation of approximately 100 pounds of marijuana; 49 U.S.C. 781, unlawful use of vessel and vehicle; and 19 U.S.C. 1703, vessel outfitted for smuggling. The record reflects that the Cutlass sedan was owned by the applicant. The applicant subsequently filed a petition for relief. On August 1, 1984, the District Director, U.S. Customs Service, reviewed the facts and evidence contained in the case file and found no basis for relief. The district director denied the petition and the applicant was advised that action will be initiated to summarily forfeit the vehicle.

Despite the fact that the applicant was not convicted of the charges and that the case was subsequently dismissed, the 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 a 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.

Counsel asserts that the applicant did not, in any way, knowingly participate in any crime whatsoever. The applicant, in a letter to the Service dated April 18, 1984, states that he loaned his car and his father-in-law's boat to a friend for a fishing trip, not knowing it was going to be used illegally. The applicant states that his ex-wife, in March 23, 1984, sent a letter to the Department of the Treasury, U.S. Customs Service, stating that the applicant received a call at his home that they had lost the key to the car he had loaned them, and that they needed a copy of the key so they could start the car and pull the boat out. The applicant took the key to them so they could start the car, not knowing they were using his property for illegal purposes. The applicant stated that he was arrested not knowing why, he was never on the boat, all

he did was to take the key to them, but his car and the boat were seized and he was never able to recuperate.

The Criminal Complaint, however, indicates that the applicant and two other defendants were observed by the officers loading a boat onto a trailer, the officers followed the three defendants and they subsequently stopped the defendants, boarded the boat, and conducted a customs search. If the applicant was in fact only delivering the spare key to his vehicle as claimed, it is noted that the applicant was involved in the hitching of the boat onto the trailer and onto his vehicle, and he was with the two other defendants when they were followed by the officers and subsequently stopped. It is also noted that the U.S. Customs Service reviewed the facts and evidence contained in the case file which included his claim of noninvolvement. No basis for relief was found, his petition for the return of his vehicle was denied, and his vehicle was forfeited.

One of the factors considered by the Federal Courts to determine whether possession of a controlled substance shall also be deemed sufficient to support a finding that the individual has also engaged in illicit drug trafficking is the amount of illicit drugs discovered. If the amount of the illicit drug is large enough, trafficking may be inferred on this basis alone. United States v. Franklin, 728 F.2d 994 (8th Cir., 1984).

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). The record in this case shows that the quantity of marijuana found in the boat was approximately 100 pounds.

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. The arrest in conjunction with the above charges, the circumstances surrounding the arrest and the subsequent seizure of the applicant's vehicle, the large amount of controlled substance discovered in the boat hitched to the applicant's vehicle, and the fact that the applicant and the two defendants were followed by the officers after they were observed loading the boat onto a trailer and were subsequently stopped and arrested are sufficient factors to support the director's conclusion that there is 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 applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act even though the record in this matter indicates that the complaint against the applicant was dismissed and he was not convicted. See Matter of Rico, supra, (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 is no waiver available to an alien found inadmissible under section 212(a)(2)(C) of the Act.

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 director to deny the application will be affirmed.

**ORDER:** The director's decision is affirmed.