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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: Miami (Tampa)

Date: 10 DEC 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: Self-represented

**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 Acting District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The acting district director's decision will be affirmed in part.

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 acting district director found the applicant inadmissible to the United States because he falls within the purview of sections 212(a)(2)(A)(i)(I) and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I) and 1182(a)(2)(C). The acting 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 notice of 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 --

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(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 March 1, 2001, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. Case No. [REDACTED] the applicant was indicted for possession of a controlled substance with intent to sell, manufacture, or deliver. On March 23, 2001, the applicant was convicted of the crime. Adjudication of guilt was withheld, he was placed on probation for a period of one year, required to complete 75 hours of community service, and ordered to pay \$471 in court costs. Because the applicant violated the terms of his probation, on August 24, 2001, the court revoked the applicant's probation, he was adjudged guilty of the crime, and he was sentenced to imprisonment for a term of 90 days.

2. On June 21, 2001, in Miami, Florida, Case No. [REDACTED] the applicant was arrested and charged with obstructing a police officer. On July 24, 2001, the applicant was convicted of the charge, and he was sentenced to credit for time served.

3. On July 18, 2001, in Miami, Florida, Case No. [REDACTED] the applicant was arrested and charged with grand theft auto. On August 8, 2001, a "no action" was entered on the case.

The acting district director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on his conviction of grand theft, a crime involving moral turpitude (paragraph 3 above). The court record in this case, however, shows that a "no action" was entered on the case and the applicant was not convicted of the crime. Therefore, this finding of the acting district director will be withdrawn.

The applicant, however, is inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act based on his conviction of possession of a controlled substance with intent to sell, manufacture, or deliver (trafficking in a controlled substance). There is no waiver available to an alien found inadmissible under this section.

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 acting district director will be affirmed as it relates to the applicant's inadmissibility under section 212(a)(2)(C) of the Act. The application will remain denied.

**ORDER:** The acting district director's decision is affirmed in part as it relates to the applicant's inadmissibility under section 212(a)(2)(C) of the Act. The application is denied.