

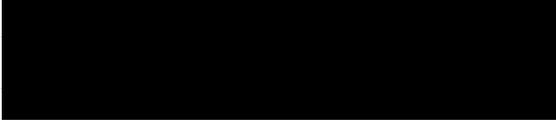


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U.S. Department of Justice
Immigration and Naturalization Service

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

...ing case decision to
prevent clearly unwarranted
imposition of personal liability



FILE: [Redacted]

Office: Miami

Date: 15 FEB 2002

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: Self-represented

PUBLIC COPY

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
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 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 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 district director found the applicant inadmissible to the United States because she falls within the purview of section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 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 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 August 23, 1985, in Dade County, Florida, Case No. [REDACTED], the applicant was arrested and charged with trafficking in marijuana (over 100 pounds). On October 21, 1985, a "nolle pros" was entered on the case.

2. On October 29, 1990, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was found guilty of grand theft. Imposition of sentence was withheld, and she was placed on probation for a period of one year with special condition that she stay away from Sears and must complete 50 hours of community service, and she was ordered to pay the sum of \$225 in fines and costs.

3. The Federal Bureau of Investigation (FBI) report shows that on June 5, 1990, in Dade County, Florida, the applicant was arrested and charged with shoplifting. The court's final disposition of this arrest is not contained in the record of proceeding.

4. On January 6, 1992, in Dade County, Florida, the applicant was arrested and charged with Count 1, burglary (unoccupied house); and Count 2, grand theft. On February 10, 1992, a "no information" was entered on the case.

5. The FBI report shows that on August 25, 1992, in Dade County, Florida, the applicant was arrested and charged with burglary (unoccupied business). The court's final disposition of this arrest is not contained in the record of proceeding.

Grand theft is a crime involving moral turpitude (paragraph 2 above). Matter of Chen, 10 I&N Dec. 671 (BIA 1964); Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974). The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act.

Further, despite the fact that the applicant was not convicted of the charge of trafficking in marijuana (paragraph 1 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 which reflects that after a reasonable suspicion, a search warrant was subsequently issued by the court, and while conducting a search of the applicant's home, police officers discovered marijuana "in excess of 100 lbs. (but less than 2000 lbs)."

Although the record in this case shows that a "nolle pros" was entered in paragraph 1 above and the applicant was not convicted of trafficking in a controlled substance, it was 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. Further, 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. Matter of 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).

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 circumstances surrounding the arrest, and the large amount of controlled substance discovered in a dwelling where the applicant resided, are sufficient factors to support the district 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, whether or not she was actually convicted. Matter of Rico, supra.

There is no waiver available to an alien found inadmissible under section 212(a)(2)(C) of the Act based on trafficking in a controlled substance. Further, the applicant was offered an opportunity to submit evidence in opposition to the district director's finding of inadmissibility. No additional evidence has been entered into the record.

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 to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.