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U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to prevent identity associated invasion of personal privacy

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

FILE: [REDACTED]

Office: Miami

Date: 28 FEB 2004

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

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 he falls within the purview of sections 212(a)(2)(A)(i)(I), 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)(I), 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 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 July 24, 1968, in the Criminal Court of Record, Dade County, Florida, Case No. [REDACTED] the applicant was found guilty of robbery and sentenced to imprisonment for a term of 10 years. On October 29, 1968, the court granted the applicant's motion for a new trial, and on January 30, 1969, the applicant was acquitted of the offense.

2. On September 11, 1967, in the Municipal Court, City of Miami, Dade County, Florida, Case No. [REDACTED] the applicant was found guilty of indecent and lewd behavior. He was sentenced to imprisonment for a term of 15 days.

3. On August 16, 1988, in the United States District Court, Southern District, West Virginia, Case No. [REDACTED], the applicant was found guilty of distribution of one kilogram of cocaine. He was sentenced to imprisonment for a term of 9 years, with a special parole term of 10 years.

4. On August 16, 1988, in the United States District Court, Southern District, West Virginia, Case No. [REDACTED] the applicant was found guilty of failure to appear. He was sentenced to imprisonment for a term of one year, to run consecutively to the 9-year term of imprisonment imposed in Case No. [REDACTED] (paragraph 3 above), and upon release from imprisonment, he shall be on supervised release for a term of 3 years, to run concurrently with the 10-year special parole term imposed in Case No. 2:-87-00118 (paragraph 3 above).

5. The Federal Bureau of Investigation (FBI) report shows that on October 4, 1983, in Elizabeth, New Jersey, the applicant was arrested and charged with (1) possession of controlled and dangerous substance (CDS) with intent to distribute, (2) possession of CDS, and (3) conspiracy to possess CDS with intent to distribute. The court's final disposition of this arrest, however, is not contained in the record of proceeding.

6. The FBI report shows that on October 13, 1984, in Miami, Florida, the applicant was arrested and charged with (1) possession of 28 lbs of marijuana, and (2) possession of 28 lbs of marijuana with intent to distribute. The court's final disposition of this arrest, however, is not contained in the record of proceeding.

Lewd and lascivious conduct or behavior is a crime involving moral turpitude (paragraph 2 above). See Matter of Garcia, 11 I&N Dec. 521 (BIA 1966). The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act.

The applicant is also inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act based on



his conviction of distribution (trafficking) of cocaine (paragraph 3 above). There is no waiver available to an alien found inadmissible under these sections except for a single offense of simple possession of thirty grams or less of marijuana. The applicant does not qualify under this exception.

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 district director to deny the application will be affirmed.

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