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Immigration and Naturalization Service

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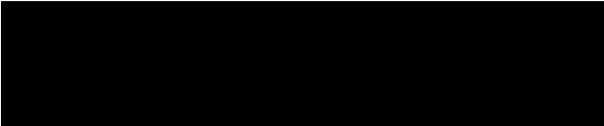
FILE: [Redacted] Office: Miami

Date: JUL 08 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 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 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.

Counsel filed an appeal subsequent to the notice of certification. She asserts that being an accessory after the fact is not a conviction of a crime of moral turpitude; therefore, the applicant is eligible for adjustment of status. Counsel further asserts that the applicant was not convicted of any drug-related offense, and there is no reason to believe she was involved in any drug offense. She states that if being an accessory before the fact makes the applicant inadmissible, she wants the opportunity to file an I-601 waiver because she is the present wife of a lawful permanent resident and the mother of a U.S. citizen.

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 that on October 6, 2000, in the Circuit Court of the Eleventh Judicial Circuit, Miami-Dade County, Florida, Case No. [REDACTED] the applicant was indicted for trafficking in cocaine (400 grams or more, but less than 150 kilograms of cocaine). On October 30, 2001, the indictment was amended to accessory after the fact. The applicant was adjudged guilty of the amended charge, she was placed on probation for a period of 5 years, and was imposed \$521 in court costs.

Because the applicant was convicted of being an accessory of a crime involving drugs and drug trafficking, a violation of the Controlled Substance Act, the district director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act. The district director further noted that drug trafficking is a crime involving moral turpitude and the applicant was also inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act.

Matter of Khourn, 22 I&N Dec. 1041 (BIA 1997), held that a conviction for distribution (trafficking) of cocaine is a conviction for a crime involving moral turpitude. The applicant, in this case, was convicted of accessory after the fact. Accessory after the fact is also a crime involving moral turpitude where the principal was found guilty of a crime involving moral turpitude. See Matter of Sanchez-Marin, 11 I&N Dec. 264, 267 (BIA 1965). The record in this case, however, reflects that the principal was not convicted of trafficking in cocaine but, rather, the court entered a "no action" on his case on October 6, 2000. The applicant is, therefore, not inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Nor is the applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

Counsel asserts that the applicant was neither convicted of any drug trafficking offense nor is there reason to believe that the applicant was a knowing assister or abettor in drug trafficking. She claims that no action was taken against the owner of the home because no cocaine was found, and that the only evidence impounded from the residence was water in the washing machine that tested positive for cocaine residue.

The district director maintained that if it was determined that the applicant is not inadmissible under sections 212(a)(2)(A)(i)(I) and/or 212(a)(2)(A)(i)(II) of the Act, it is the determination of the district director that the applicant falls within the purview of section 212(a)(2)(C) because he has reason to believe that the applicant is an alien who has been a knowing assister or abettor in drug trafficking.

The district director based his conclusion on the information or indictment report filed with the Circuit Court of the Eleventh Judicial Circuit, Miami-Dade County, Florida, which reflects that the applicant unlawfully and knowingly sell, purchase, manufacture, deliver, or bring into this state, or was knowingly in actual or constructive possession of 400 grams or more, but less than 150 kilograms of cocaine. The police arrest report dated September 5, 2000, also reflects that during the course of a narcotics-related search warrant, the applicant was found to be in possession of approximately 20 pounds of cocaine. The court depositions of the detectives involved in the applicant's arrest was cited by the district director in his decision. Therefore, the depositions will not be repeated here.

Pursuant to Florida Statute 777.03 (accessory after the fact), any person who maintains or assists the principal or accessory before the fact, or gives the offender any other aid, knowing that the offender had committed a felony or been accessory thereto before the fact, with intent that the offender avoids or escapes detection, arrest, trial or punishment, is an accessory after the fact.

The record in this case reflects that the applicant was the only person in the house at the time the search warrant was executed, cocaine was found in the washing machine, both toilets in the house were clogged with plastic bags and cocaine residue was found around both toilets, and other drug paraphernalia was found throughout the house.

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 charges, the amount of drug recovered from the home of the applicant's boyfriend where the applicant resided or visited frequently, the applicant's behavior while the police was trying to gain access to the home, and the fact that she was convicted of being an accessory after the fact in a crime involving drug trafficking, are sufficient factors to support the district director's conclusion that 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 whether or not she was actually convicted of the original charge of trafficking in cocaine. See Matter of Rico, 16 I&N Dec. 181 (BIA 1977) (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).

The applicant is, therefore, inadmissible to the United States pursuant to 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 based on trafficking in a controlled substance.

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.