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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: JUL 25 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

**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 in part. The application will remain denied.

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)(C) and 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. and 1182(a)(2)(C) and 1182(a)(2)(B). 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).

(B) Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for

which the aggregate sentences to confinement were 5 years or more is inadmissible.

(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 June 25, 1985, in the Circuit Court of the Seventeenth Judicial Circuit, Broward County, Florida, Case No. [REDACTED] the applicant entered a plea of guilty to trafficking in cannabis. He was adjudged guilty of the crime and sentenced to imprisonment for a term of 5 years.

2. The Federal Bureau of Investigation (FBI) report, contained in the record of proceeding, reflects that the applicant was arrested on February 7, 1981 at Dade County, Florida, and charged with Count 1, kidnapping, and Count 2, extortion. Adjudication of guilt was withheld as to Count 1 and he was placed on probation and community control for a period of 2 years. The FBI report further shows that the applicant was convicted of the added charge of "poss of wea-weapon commit felony" and he was placed on probation.

3. The FBI report reflects that on June 26, 1981, in Dade County, Florida, the applicant was arrested and charged with Count 1, kidnapping, and Count 2, possession of a weapon (firearm). The court's final disposition of this arrest is not contained in the record of proceeding.

Kidnapping is a crime involving moral turpitude. Matter of C-M-, 9 I&N Dec. 487 (BIA 1961); Matter of Nakoi, 14 I&N Dec. 208 (BIA 1972). While a conviction or admission of the act of kidnapping may render the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, the court's final disposition as to paragraphs 2 and 3 above is not contained in the record of proceeding, nor does the record contain evidence that the applicant was requested to submit the arrest reports and the court's final dispositions of these arrests.

Further, the district director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(B) of the Act based on his convictions of two or more offenses for which the aggregate sentences to confinement were five years or more. This finding of the district director, however, is not supported by the record. The record of proceeding contains no information or court disposition relevant to paragraphs 2 and 3

above, or any other arrest and conviction not listed in the FBI report, to establish that the applicant had two or more offenses for which the aggregate sentences to confinement were five years or more. Therefore, the finding of the district director that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(B) of the Act 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 trafficking in cannabis. There is no waiver available to an alien found inadmissible under this section.

In view of the foregoing, 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 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 director's decision is affirmed in part as it relates to the applicant's inadmissibility under section 212(a)(2)(A)(C) of the Act. The application is denied.