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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: Newark

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

Helen E. Crawford for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Newark, New Jersey, 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 determined that the applicant was inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(II) 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 August 29, 1986, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED], the applicant was indicted for Count 1, possession of a controlled substance (cocaine), and Count 2, sale or delivery of a controlled substance (cocaine). On September 30, 1986, the applicant was found guilty of Count 2; adjudication of guilt was withheld and he was placed on probation for a period of 12 months. A "nolle pros" was entered as to Count 1. Because the applicant violated the terms of his probation, on April 9, 1987, the applicant's probation was revoked, he was adjudged guilty as to Count 2 and sentenced to imprisonment for a term of 90 days.

2. On November 9, 1988, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was indicted for Count 1, possession of a controlled substance (cocaine), and Count 2, sale, purchase or delivery of a controlled substance (cocaine). On September 14, 1989, the applicant was adjudged guilty as to Count 2; he was sentenced to imprisonment for a term of one year and one day concurrent with sentence imposed in Case No. [REDACTED] (paragraph 3 below). A "nolle pros" was entered as to Count 1.

3. On November 23, 1988, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was indicted for Count 1, possession of a controlled substance (cocaine), and Count 2, sale, purchase or delivery of a controlled substance (cocaine). On September 14, 1989, the applicant was adjudged guilty as to Count 2 and he was sentenced to imprisonment for a term of one year and one day. A "nolle pros" was entered as to Count 1.

The listing of the Circuit Court of the Eleventh Judicial Circuit, contained in the record of proceeding, reflects that the applicant was also convicted of the following crimes and sentenced to credit for time served. The listing, however, does not include the number of days or months served by the applicant:

on April 8, 1977 for municipal ordinance violation;
on April 8, 1977 for municipal ordinance violation;

on September 5, 1991 for trespassing;
on September 20, 1988 for disorderly conduct;
on August 30, 1988 for trespassing;
on September 10, 1979 for loitering;
on December 3, 1979 for trespassing/structure;
on April 19, 1991 for petit larceny/theft;
on September 20, 1988 for disorderly conduct; and
on September 7, 1988 for trespassing.

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. While the record reflects numerous convictions pertaining to the applicant, as noted above, the listing of the Circuit Court of the Eleventh Judicial Circuit does not include the number of days or months served by the applicant for each conviction. Therefore, the district director's finding of inadmissibility pursuant to section 212(a)(2)(B) of the Act will not be concurred at this time.

The applicant, however, is inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act based on his convictions of sale, purchase or delivery (trafficking) of cocaine (paragraphs 1, 2, and 3 above). 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 district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.