U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRAW APPEALS

425 Eye Street N. W.
ULLB, 3rd Floor
Washington, D. C. 20536

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

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)(l)(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 $1 10 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMIN4TIONS A

Robert P. Wiemann, Director

Administrative Appeals Office U V

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DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The Associate Commissioner affirmed the decision of the director to deny the application. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted and the previous decision of the Associate Commissioner will be affirmed.

The applicant is a native and citizen of Cuba who is seeking to adjust his status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966.

The director originally denied the application for permanent residence after determining that the applicant was inadmissible to the United States pursuant to section 212 (a) (2) (A) (i) (11) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182 (a) (2) (A) (i) (II), based on his conviction of possession of marijuana .

Upon review of the record of proceeding, the Associate Commissioner concurred with the district director that the applicant was inadmissible to the United States pursuant to section 212 (a) (2) (A) (i) (11) of the Act. He noted that although a waiver of grounds of inadmissibility is available to an alien convicted of a single offense of simple possession of thirty grams or less of marijuana pursuant to section 212 (h) of the Act, the record does not show the amount of marijuana in the applicant's possession at the time of his arrest. The Associate Commissioner further noted that the district director found that the applicant was not eligible for a waiver of inadmissibility because he did not have the requisite family relationship to apply for a waiver. The Associate Commissioner, therefore, denied the application on August 28, 2001.

On motion, counsel submits the applicant's arrest report and other court documents and states that the record clearly indicates that the applicant and a codefendant were in possession of a single marijuana cigarette; thus, while the exact amount is not defined herein, it i; reasonable to assume that the amount of marijuana was far below 30 grams. Counsel further states that the applicant has had a meaningful relationship for a number of years with a lawful permanent resident and they intend to marry in the near future; therefore, as soon as the applicant provides the marriage certificate, it will be forwarded to the Service.

The applicant, however, is not the recipient of an approved waiver of such grounds of inadmissibility pursuant to section 212 (a) (2) (A) (i) (11) of the Act. Nor is there evidence in the record that the applicant filed an application for waiver of grounds of inadmissibility (Form 1-601).

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The applicant, therefore, remains inadmissible to the United States pursuant to section 212 (a) (2) (A) (i) (11) of the Act. The previous decision of the Associate Commissioner will be affirmed.

ORDER : The decision of the Associate Commissioner dated August 28, 2001, is affirmed.