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U.S. Department of Justice

Immigration and Naturalization Service

identification data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

FILE: [redacted] Office: Miami Date: 19 MAR 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, 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 section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 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 --
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> * * *
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> (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).
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> * * *
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> (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 June 5, 1996, in Dade County, Florida, Case No. [redacted] the applicant was arrested and charged with Count 1, sale of cocaine within 1000 feet of a school; and Count 2, possession of cocaine. On July 15, 1996, a "no information" was entered on the case.

Despite the fact that the applicant was not convicted of the charge, the district director, citing Matter of Rico, 16 I&N Dec. 181 (BIA 1977), and Matter of Tillighast, 27 F.2d 580 (1st Cir., 1928), determined that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act because he had reason to believe the applicant 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. The district director based his conclusion on the police report which shows that undercover officers observed the applicant motioning with his hands for the co-defendant to wait; the applicant went to the Berkley Shore Hotel and subsequently returned; the applicant met with the co-defendant; the applicant placed a small object on a public pay phone which was picked up by the co-defendant who handed $20 to the applicant; and, when the officer approached, the co-defendant threw down two cocaine rocks.

"Reason to believe" might be established by a conviction, an admission, a record of arrests with an unexplained failure to prosecute by the local government, or several reliable and corroborative reports. The essence of the standard is that the consular officer or immigration officer must have more than a mere suspicion. There must exist a probability, supported by evidence, that the alien is or has been engaged in trafficking.

None of the criteria listed above is present in this case. The record shows that the applicant had only one arrest relating to a controlled substance. While the undercover officer witnessed the applicant place a small object on a public pay phone, the report does not show that the "small object" was indeed the two cocaine rocks which the co-defendant threw down, or that the $20 handed to the applicant was for the exchange of the two cocaine rocks. Further, the applicant was not indicted for the charges but, rather, a "no information" was entered by the court.

Accordingly, the record does not support a finding that there was reason to believe the applicant 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. He is, therefore, not inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act.

The record, however, reflects that the applicant was requested on June 13, 2001, to submit a police clearance under the name of and (a name he uses as an alias). While the applicant furnished a letter of clearance from the Metro-Dade Police Department under the names of and (another alias), he failed to submit a police clearance under the name of

Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. Further, Matter of Marques, 16 I&N Dec. 314 (BIA 1977), held that when an alien seeks favorable exercise of the discretion of the Attorney General, it is incumbent upon him to supply the information that is within his knowledge, relevant, and material to a determination as to whether he merits adjustment. When an applicant fails to sustain the burden of establishing he is entitled to the privilege of adjustment of status, his application is properly denied.

ORDER: The district director's decision is affirmed.