



A2

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

FILE: [Redacted]

Office: Miami

Date: MAY 06 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, 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 The district director's decision will be withdrawn and the application will be approved.

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.

In response to the notice of certification, counsel asserts that the district director erred in finding that the applicant was assisting in the drug transaction by providing protection to the co-defendant. He states that the record reflects that the applicant was found in a car across the street and that no drugs or weapons were found in the car or on the applicant. Counsel further asserts that the district director exceeded his authority in inferring that the applicant had knowledge of the drug transaction merely because the applicant was in a nearby car and had arrived at the scene with the co-defendant; moreover, he failed to adequately consider the State Attorney's decision to take no action on the criminal charges.

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 --

(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 September 18, 1982, in Broward County, Florida, Case No. [REDACTED] the applicant was arrested and charged with Count 1, trafficking in narcotics (methaqualone); and Count 2, resisting arrest without violence. On October 4, 1982, a "no information" was entered on the case.

Despite the fact that the applicant was not convicted of the charges, 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 criminal complaint which reflects that the applicant was subsequently arrested after the co-defendant made a statement to the arresting officers that "my partner he's across the street if something not right he shoot." The criminal complaint was cited by the district director in his decision and will, therefore, not be repeated here.

"Reason to believe" may be established by a conviction, an admission, a long 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. (1) The applicant has no other arrest for violation of a controlled substance; (2) while he was sitting in a car across the street from where the transaction was being conducted, the arrest report does not reflect that he was indeed an active or inactive participant in the drug transaction, or that he had any knowledge of the drug transaction; (3) although the co-defendant stated that "my partner he's across the street if something not right he shoot," the arrest report does not indicate that the police found any weapons or drugs on his person or in the car; (4) while the applicant was arrested for trafficking in narcotics and resisting arrest without violence, the applicant was indicted by the Broward County Court on September 20, 1982, only for the offense of resisting arrest without

violence; he was not indicted for trafficking in narcotics; (5) a "no information" was entered on the case on October 4, 1982.

Accordingly, the record does not support a finding that there was reason to believe the applicant is or has been an illicit trafficker in a controlled substance. Nor is there reasonable, substantial, probative or reliable evidence to support a finding that he is or has been an illegal trafficker in drugs.

The applicant is, therefore, admissible to the United States pursuant to section 212(a)(2)(C) of the Act, eligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966, and he warrants a favorable exercise of discretion. The district director did not find the applicant ineligible under any other provisions of the Act. The decision of the district director will be withdrawn, and the application will be approved.

**ORDER:** The director's decision is withdrawn. The application is approved.