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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



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: 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. Wienmann, 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 --

(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 the following:

1. On January 26, 1981, in the United States District Court, Southern District of Florida, Case No. [REDACTED], the

applicant was indicted for Count 1, conspiracy to possess with intent to distribute cocaine; Count 2, possession with intent to distribute cocaine; Count 3, distribution of cocaine; Count 4, possession with intent to distribute cocaine; Count 5, distribution of cocaine; and Count 6, unlawfully carrying a firearm during the commission of the offenses of conspiracy to possess with intent to distribute and possession with intent to distribute cocaine. On August 4, 1981, the applicant was convicted of Count 6, and he was sentenced to imprisonment for a period of 2 years. The court record does not contain information as to the final disposition of Counts 1 to 5.

2. The Federal Bureau of Investigation Report shows that on February 9, 1985, in Miami, Florida, the applicant was arrested for Count 1, trespass after warning; Count 2, possession of cocaine; and Count 3, possession of drug paraphernalia. The final court disposition of this arrest is not contained in the record of proceeding.

Although the record does not reflect that the applicant was convicted of the charges of possession and distribution of cocaine in Counts 1 to 5 (paragraph 1 above), 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 court's indictment report which shows that the applicant and five other defendants were charged with conspiracy, possession and distribution of cocaine, and carrying a firearm during the commission of the offenses of conspiracy to possess with intent to distribute and possession with intent to distribute cocaine.

Intent to distribute may be established by circumstantial evidence. Evidence the defendant possess cocaine with the requisite intent to distribute is sufficient as a matter of law, where cocaine is packaged in a manner consistent with distribution, and/or there is evidence of distribution paraphernalia, amounts of cash, weapons, or other indicia of narcotics distribution. United States v. Franklin, 728 F.2d 994 (8th Cir. 1984). In the matter at hand, the charging document and conviction record show that the applicant was unlawfully carrying a firearm, to wit: a Colt Combat Commander .45 caliber semi-automatic pistol, containing live ammunition, during the commission of the offenses of conspiracy to possess with intent to distribute and possession with intent to distribute cocaine.

Accordingly, it is concluded that there is sufficient, reasonable, substantial, and probative evidence to support the district director's conclusion that there was reason to believe the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing assistor, abettor, conspirator, or colluder in the illicit trafficking in a controlled substance. The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act, whether or not he was actually convicted. Matter of Rico, supra.

There is no waiver available to an alien found inadmissible under section 212(a)(2)(C) of the Act based on trafficking in a controlled substance. Further, the applicant was offered an opportunity to submit evidence in opposition to the district director's finding of inadmissibility. No additional evidence has been entered into the record.

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 director will be affirmed.

ORDER: The district director's decision is affirmed.