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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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



FILE: [Redacted]

Office: Miami

Date: SEP 23 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:  
[Redacted]

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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 Associate Commissioner affirmed the decision of the district 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 district director denied the application after determining that the applicant was inadmissible to the United States because he falls within the purview of section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(II).

On March 4, 2002, the Associate Commissioner concurred with the district director's conclusion and affirmed his decision to deny the application.

On motion, counsel asserts that the applicant was not convicted of possession of marijuana or cocaine in Case No. [REDACTED] therefore, he should be allowed to adjust his status.

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).

The Associate Commissioner, in his March 4, 2002 decision, listed the applicant's arrests and/or convictions as follows:

1. On June 13, 1996, in Dade County, Florida, Case No. [REDACTED] the applicant entered a plea of guilty to Count 1, petit theft, and Count 2, possession of marijuana (under). He was found guilty of both Counts 1 and 2 and sentenced to credit for time served as to both counts.

2. On December 17, 2000, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with Count 1, possession of cocaine, and Count 2, possession of marijuana. On January 8, 2001, the court entered a "no action" on the case.

The Associate Commissioner concluded that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on his conviction of possession of marijuana. While the Associate Commissioner inadvertently listed "paragraph 2 above" as the basis of the applicant's inadmissibility, the record clearly shows that the applicant was convicted of "paragraph 1 above," under Case No. [REDACTED]

Accordingly, the applicant remains ineligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966, because he is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act. The previous decision of the Associate Commissioner will be affirmed.

**ORDER:** The decision of the Associate Commissioner dated March 4, 2002 is affirmed.