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U.S. Department of Homeland Security

Citizenship and Immigration Services

**A2**

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, D.C. 20536



FILE:

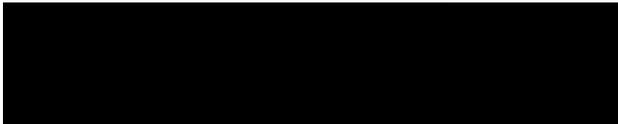
Office: Miami

Date: **DEC 3 - 2003**

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:



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 Citizenship and Immigration Services (CIS) 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The acting district director's decision will be affirmed in part. The application will remain denied.

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 acting district director found the applicant inadmissible to the United States, pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II) and § 1182(a)(2)(C). The acting 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 applicant is eligible to adjust his status because his drug-related convictions are not at the level required to render him inadmissible. He further asserts that these offenses are only misdemeanors and the mistakes were made over six years ago, and to not allow the applicant to adjust would cause extreme hardship to his lawful permanent resident mother and sister who are residing in this country.

Section 212(a)(2) of the Act 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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(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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(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 December 5, 1992, in Dade County, Florida, Case No. M92-27328, the applicant was arrested and charged with Count 1, trespassing after warning, and Count 2, possession of a controlled substance (marijuana). On March 6, 1993, the applicant was found guilty of both Counts 1 and 2, and the court withheld adjudication of guilt.

2. On June 12, 1997, in Dade County, Florida, Case No. B97-028332, the applicant was arrested and charged with Count 1, failure to observe park hours/beach closure; Count 2, possession of marijuana; and Count 3, possession of drug paraphernalia. On June 16, 1997, the applicant was convicted of Counts 2 and 3 and he was sentenced to credit for time served. The record further shows that, based on a bench warrant for Case No. M92-28329 (paragraph 1 above), the applicant was convicted on June 12, 1997, of possession of marijuana and trespassing, and he was sentenced to credit for time served.

While the acting district director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act, the applicant was not convicted of trafficking in a controlled substance, nor is there evidence that the applicant is an alien whom there was reason to believe is or has been an illicit trafficker in a controlled substance. The police reports (paragraphs 1 and 2 above) show that based on searches incident to the applicant's arrests on December 5, 1992 and June 12, 1997, marijuana and drug paraphernalia were found in the applicant's pockets. The applicant was charged and subsequently convicted of possession of marijuana and drug paraphernalia. Therefore, the finding of the acting district

director that the applicant was inadmissible, pursuant to section 212(a)(2)(C) of the Act, will be withdrawn.

The applicant, however, is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) of the Act, based on his convictions of possession of marijuana and possession of drug paraphernalia. Despite counsel's assertion on certification, the Service is required to rely on the court record as it stands, and can only make determinations of guilt or innocence based on that record. Furthermore, there is no waiver available to an alien found inadmissible under this section except for a single offense of simple possession of thirty grams or less of marijuana. The applicant does not qualify under this exception.

Accordingly, the applicant is ineligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966. The decision of the acting district director will be affirmed as it relates to the applicant's inadmissibility under section 212(a)(2)(A)(i)(II) of the Act. The application will remain denied.

**ORDER:** The acting district director's decision is affirmed in part as it relates to the applicant's inadmissibility under section 212(a)(2)(A)(i)(II) of the Act. The application is denied.