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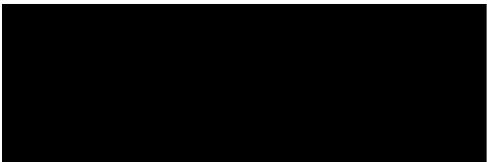
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U.S. Department of Homeland Security

Citizenship and Immigration Services

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



FILE:

Office: Miami

Date: DEC 18 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: Self-represented

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 for review. The acting 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 acting district director found the applicant inadmissible to the United States because he falls within the purview of 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, the applicant asserts that he was not charged with possession and/or distribution or intent to distribute; he was charged with only one count: Failure to Pay Tax in Violation of the Marihuana Tax Act. He states that he was just a passenger, not the owner of the car or contraband, the owner stated in the trial that he had nothing to do with it, and that the Supreme Court overturned the Tax Act of which he was convicted. The applicant further states that failure to pay taxes on Tax Stamp Laws has not been found to be a crime involving moral turpitude. On April 24, 2003, the applicant requested additional time in order to hire a new attorney. However, as of this date, no additional evidence has been entered into the record of proceeding. Therefore, the record is considered complete.

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 --

(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).

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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 September 3, 1968, in the United States District Court, Southern District of Texas, Corpus Christi Division, Case No. CR. 6291, the applicant was convicted of violation of the Marihuana Tax Act, Sec. 4744(a)(2), Title 26, U.S.C. He was sentenced to imprisonment for a period of 2 years, suspended 5 years, conditioned on good behavior and conditioned that the applicant be deported and further conditioned that he not enter the United States or attempt to enter the United States illegally.

The acting district director determined that the Marihuana Tax Act made it illegal for anyone who had not registered and paid the tax to carry, transport, or deliver marihuana, and that based on the language of this Act, marijuana was considered a controlled substance at the time of the applicant's arrest and conviction. Therefore, by failing to comply with the Marihuana Tax Act, the applicant violated a regulation pertaining to a controlled substance and he is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act. The acting district director further determined that since the applicant was convicted of not paying the tax required for importing marijuana,

it could be inferred that he was attempting to illegally import the 24 pounds of marijuana. Therefore, he is also inadmissible pursuant to section 212(a)(2)(C) of the Act.

The acting district director maintained that although the United States Supreme Court overturned the Marijuana Tax Act in *Leary v. United States*, No. 65 1969. SCT. 1512, 395 U.S. 6, 89 S. Ct. 1532, 23 L. Ed. 2d 57., the ruling did not overturn prior convictions; only the one on appeal. The applicant, however, has presented no evidence that his conviction was vacated as a result of this ruling.

While the applicant asserts that failure to pay taxes on Tax Stamp Laws has not been found to be a crime involving moral turpitude, the acting district director did not find the applicant inadmissible, pursuant to section 212(a)(2)(A)(I)(I) of the Act, based on conviction of a crime involving moral turpitude.

However, as determined by the acting district director, the applicant is inadmissible to the United States, pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act, based on his conviction of violating a regulation pertaining to a controlled substance.

The applicant is also inadmissible to the United States, pursuant to section 212(a)(2)(C) of the Act, because there is reason the 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 Board of Immigration Appeals, in *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977), held that an actual conviction of a drug-trafficking offense or violation is not necessary to establish the ground of inadmissibility under section 212(a)(2)(C) of the Act. There are sufficient facts to support a finding that there is reason the 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 court's indictment report, in this case, states, in part, that the applicant and two co-defendants:

...did unlawfully, knowingly and feloniously transport and conceal, and facilitate the transportation and concealment of a quantity of marihuana, to wit: Approximately twenty-four (24) pounds of marihuana...

Further, one of the factors considered by the Federal Courts to determine whether possession of a controlled substance shall also be deemed sufficient to support a finding that the individual has also engaged in illicit drug trafficking, is the amount of illicit drugs discovered. If the amount of the illicit drug is large enough, trafficking may be inferred on this basis alone. *Matter of Franklin*, 728 F.2d 994 (8th Cir., 1984).

The intent to distribute a controlled substance has been inferred solely from possession of a large quantity of the substance. *United States v. Koua Thao*, 712 F.2d 369 (8th Cir. 1983) (154.74 grams of opium); *United States v. DeLeon*, 641 F.2d 330 (5th Cir. 1980) (294 grams of cocaine); *United States v. Grayson*, 625 F.2d 66 (5th Cir. 1980) (413.1 grams of 74% pure cocaine); *United States v. Love*, 559 F.2d 107 (5th Cir. 1979) (26 pounds of marijuana); *United States v. Muckenthaler*, 584 F.2d 240 (8th Cir. 1978) (147 grams of cocaine).

Despite the applicant's claim that he was only a passenger and not the owner of the car or contraband, intent to distribute is established when the controlled substance is either found on the person of the accused, or in a vehicle or boat driven or occupied by the accused, or in a dwelling where the accused resided or visited frequently. The arrest and conviction and the large amount of controlled substance discovered in the vehicle occupied by the applicant, are sufficient factors to support a finding that there is 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 applicant is, therefore, inadmissible to the United States, pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act, whether or not he was actually convicted. See *Matter of Rico*, *supra*. There is no waiver available to an alien found inadmissible under section 212(a)(2)(C) of the Act.



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 to deny the application will be affirmed.

ORDER: The acting district director's decision is affirmed.