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Citizenship and Immigration Services

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

Handwritten signature/initials

[Redacted]

FILE:

[Redacted]

Office: MIAMI, FLORIDA

Date:

JAN 07 2004

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)

ON BEHALF OF APPLICANT:

[Redacted]

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

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.

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 (CAA) of November 2, 1966. The CAA provides, in part:

[T]he 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, may be adjusted by the Attorney General, (now the secretary of Homeland Security, (Secretary)), in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and 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. An application for adjustment of status was previously submitted and denied by the district director for lack of prosecution and that decision was affirmed by the AAO. See *District Director Decision* dated September 22, 2000 and *AAO decision*, dated March 3, 2001.

In addition to the above inadmissibilities, the AAO finds that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of a crime involving moral turpitude.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(2) of the Act states in pertinent part, that:

(A)(i) [A]ny 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).

* * *

(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 December 13, 1972 the applicant was arrested and charged with possession of a controlled substance for sale, possession of narcotics for sale, possession of marijuana and foreign traffic-warrant. On or about November 1, 1973 the applicant was convicted in the Superior Court of Downey, California, for the offense of Distributing a Schedule IV Narcotic Substance and he was convicted to 24 months of probation.

Participation in illicit drug trafficking is a crime involving moral turpitude where knowledge or intent is an element of the offense. *Matter of Khourn*, 21 I&N Dec. 1041, 1047 (BIA 1997). The applicant is, therefore, inadmissible to the United States, pursuant to sections 212(a)(2)(A)(i)(I) of the Act, based on his conviction of a crime involving moral turpitude.

The applicant is also 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 for possession with intent to sell a controlled substance. There is no waiver available to an alien found

inadmissible under these sections except for a single offense of simple possession of thirty grams or less of marijuana. applicant does not qualify under this exception.

The applicant is ineligible for adjustment of status to permanent residence, pursuant to section 1 of the CAA 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.