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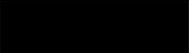
AD



U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

**U.S. Citizenship
and Immigration
Services**



FILE:  Office: MIAMI, FLORIDA

Date: **JAN 22 2004**

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 of the Administrative Appeals Office 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.

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)(I) and 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I) and § 1182(a)(2)(A)(i)(II). The acting 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 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).

The record reflects that the applicant has the following convictions in the Circuit Court in and for Dade County, Florida; March 16, 1992 for aggravated battery, November 2, 1992 for possession of marijuana and possession of drug paraphernalia and August 14, 1993 for battery.

In *Minh Duc Luu-Le v. Immigration and Naturalization Service* (No. 97-70595, August 3, 2000), the Ninth Circuit Court of Appeals upheld a decision of the Board of Immigration Appeals (BIA) affirming an Immigration Judge's determination that a conviction for possession of drug paraphernalia was a conviction for violation of a law relating to a controlled substance.

Thus the applicant is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) of the Act, based on his conviction for the offense of possession of drug paraphernalia. 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.

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.