U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: JUL 12 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 PETITIONER:

[redacted]

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, 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 was affirmed. The matter is now before the AAO on a motion to reconsider. The motion will be granted and the previous decisions of the Acting District Director and the AAO 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 pertinent 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II) for having been convicted for the offence of possession of a controlled substance and 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C) for being an alien who an Immigration Officer has reason to believe is or has been an illicit trafficker in a controlled substance. The Acting District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See Acting District Director's Decision* dated June 18, 2003. On December 3, 2003, the AAO found that the information in the record of proceedings did not support a finding of inadmissibility under section 212(a)(2)(C) of the Act. Nevertheless, the AAO found that the applicant is clearly inadmissible under section 212(a)(2)(A)(i)(II) of the Act and affirmed the Acting District Director's decision.

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-
>
> . . . .
>
> > (II) a violation of (or a conspiracy or attempt to violate) any law or regulations 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)), is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

> (h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D) and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relate to a single offense of simple possession of 30 grams of less of marijuana.

The record of proceedings reflects the following convictions:

1. On March 6, 1993, in the County Court in and for Dade County, Florida, the applicant was convicted of the offense of Possession of Marijuana.

2. On June 12, 1997, in the County Court in and for Dade County, Florida, the applicant was convicted of the offenses of Possession of Marijuana and Possession of Drug Paraphernalia.

As stated above there is no waiver available to an alien found inadmissible under this section of the Act except for a *single* offense of simple possession of thirty grams or less of marijuana. The applicant has two convictions for possession of marijuana and does not qualify under this exception.

In the motion to reopen counsel asserts that the applicant qualifies for an exception since he was arrested for possession of less than 30 grams of marijuana and the drug paraphernalia was "rolling papers." Counsel refers to the June 12, 1997 conviction, and states that the arresting officer presumed that the "rolling papers" were to be used for drugs even though no marijuana residue was found amongst them. Counsel further states that neither the Acting District Director nor the AAO addressed the issue that the "rolling papers" should not be classified as drug paraphernalia. In the motion to reopen counsel addresses only one of the applicant's two convictions.

The issue of whether "rolling papers" are drug paraphernalia is irrelevant and will not be addressed since the record of proceedings clearly reflects that the applicant has two convictions for possession of marijuana and is subject to the provision of section 212(a)(2)(A)(i)(II) of the Act. Notwithstanding the arguments on appeal, section 212(a)(2)(A)(i)(II) of the Act is very specific and applicable. The applicant is not eligible for any relief under this Act. Accordingly, the acting district director's and AAO's decisions will be affirmed.

ORDER: The prior decisions as they relate to the applicant's admissibility under section 212(a)(2)(A)(i)(II) of the Act are affirmed.