U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date:

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: 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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The District Director's decision will be withdrawn and the matter remanded to him for further action.

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 District Director found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(C). The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See District Director's Decision* dated April 22, 2004.

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

> (C) Controlled substance traffickers.-
>
> any aliens who the consular officer of the Attorney General knows or has reasons to believe-
>
> > (i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or.....is inadmissible.

The record reflects on June 4, 2002, the applicant was arrested and charged with cannabis trafficking and possession with intent to use drug paraphernalia. The record reflects that the applicant was one of four individuals who were arrested and were in actual or constructive possession and/or in excess of 25 pounds but less than 2,000 pounds of cannabis and did unlawfully use or possess with the intent to use certain drug paraphernalia.

Although the applicant was not convicted of the charges filed against him the District Director concluded that there is sufficient reason to believe that the applicant has been involved in the trafficking of a controlled substance and found him excludable under section 212(a)(2)(C) of the Act.

There is no waiver available to an alien found inadmissible under section 212(a)(2)(C) of the Act.

On April 22, 2004, a Notice of Certification was forwarded to the applicant's address offering him the opportunity to submit evidence in opposition to the District Director's findings. On May 5, 2004, the Notice of Certification was returned to the Miami district office because of insufficient address.

The record of proceedings reflects that the Notice of Certification was forwarded to A review of the documentation in the record reveals that the applicant has provided an apartment number on his application for adjustment of status. Since the applicant never received the District Director's Notice of Certification he was not informed of his opportunity to submit evidence in opposition of the District Director findings.

In view of the foregoing, the District Director's decision will be withdrawn and the record will be remanded to him in order to reissue the Notice of Certification and forward it to the applicant's correct address.

ORDER: The District Director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion.