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



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: MIAMI, FLORIDA Date: JUL 07 2005

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: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II) for having been convicted of a violation of a law relating to a controlled substance. The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See District Director's Decision* dated August 12, 2004.

Though the record contains a G-28 Notice of Entry of Appearance, the individual who filed the G-28 is not authorized to represent the applicant before Citizenship and Immigrations Services (CIS). The AAO will accept the information presented, but will only provide a copy of the decision to the applicant.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. In respond to the notice of certification the applicant does not dispute the fact that he was convicted of the offense of possession with intent to distribute marijuana. He states that the District Director erred in stating that he was sentenced to confinement of 5 years or more. He further states that he is not a serious criminal, and he made a mistake not to defend himself properly when he accepted the charges of Driving Under the Influence (D.U.I.) and to intent to distribute marijuana. He also states that he is presently working and living as a common-law husband with an individual whom he plans to marry. Finally the applicant requests that the AAO reconsider the District Director's decision and give him the opportunity to adjust his status to that of a lawful permanent resident of the United States.

In his decision the District Director did not refer to the applicant's D.U.I. conviction nor did he imply that the applicant had aggregate sentences of confinement of 5 years or more. The District Director simply stated the complete section 212(a)(2) of the Act that includes paragraph (B) which refers to multiple criminal convictions. In his decision the District Director clearly states that the applicant falls within the purview of section 212(a)(2)(A)(i)(II) of the Act. *Matter of Khalik*, 17 I&N Dec. 518 (BIA 1980), held that the Service cannot go behind the judicial record to determine the guilt or innocence of an alien for a criminal offense. A record of conviction constitutes a conviction for immigration purposes. The applicant can only appeal such a conviction within the court system.

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 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 on June 30, 1997, in the United States District Court, Southern District of Florida, the applicant was convicted for the offense of possession with intent to distribute marijuana in violation of title 21, U.S.C. § 841(a)(1). The applicant was sentenced to four months imprisonment and three years of supervised release.

Based on the applicant's conviction he is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II).

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 or less of marijuana.

As noted above there is no waiver available to an alien found inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 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 District Director to deny the application will be affirmed.

ORDER: The District Director's decision is affirmed.