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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

A2

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

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 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 District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application since the applicant does not have qualifying family member in order to be eligible to file a waiver. *See District Director's Decision* dated October 8, 2004.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. No additional evidence has been entered into the record.

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 criminal history:

February 27, 1995 the applicant was arrested by the Miami Beach police department and charged with possession of marijuana. The applicant was not prosecuted.

July 31, 1995, the applicant was arrested by the Metro Dade police department and charged with driving under the influence, possession of marijuana and possession of narcotics equipment. On October 17, 1995, he was found guilty as charged.

December 26, 1996 the applicant was arrested by the Metro Date police department, charged with driving under the influence and on January 26, 1997 he was found guilty as charged.

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 offenses of possession marijuana and possession of drug equipment. 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 District Director to deny the application will be affirmed.

ORDER: The District Director's decision is affirmed.