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U.S. Citizenship
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Services

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FILE:



Office: MIAMI, FLORIDA

Date: JUN 16 2005

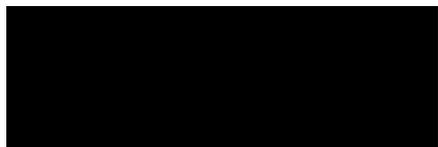
IN RE:

Applicant:



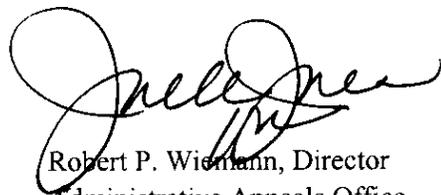
APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF APPLICANT:



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 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 July 14, 2004.

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

(C) Controlled substance traffickers.-

any aliens who the consular officer or 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 December 2, 1992, the applicant was arrested by the Metro Dade Police Department and charged with possession of marijuana. The record reflects that the applicant received and signed for a package containing 20 pounds of marijuana.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. Counsel submits a brief in which he states that the applicant signed for a package delivered by a United Postal Service driver on behalf of an individual who used to live at his house. Counsel states that the applicant was asked by this individual to receive medication on his behalf and he signed for the package without knowledge that it contained a controlled substance. In addition counsel states that after the applicant was taken into custody he was released and he was never convicted of a crime and therefore section 212(a)(2) of the Act is irrelevant in this case.

Although the applicant was not convicted of the charges filed against him the District Director concluded that there was sufficient reason to believe that the applicant had 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.

In *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977), the Board held that an actual conviction of a drug-trafficking offense or violation is not necessary to establish the ground of inadmissibility under section 212(a)(2)(C) of the Act. Further, one of the factors considered by the Federal Courts to determine whether possession of a controlled substance shall also be deemed sufficient to support a finding that the individual has also engaged in illicit drug trafficking, is the amount of illicit drugs discovered. If the amount of the illicit drug is large enough, trafficking may be inferred on this basis alone. *Matter of Franklin*, 728 F.2d 994 (8th Cir., 1984).

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.