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**U.S. Citizenship
and Immigration
Services**

A2

FILE:



Office: TEXAS SERVICE CENTER

Date: **NOV 18 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 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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, who certified her decision to the Administrative Appeals Office (AAO) for review. The 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 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 Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See Director's Decision* dated August 29, 2005.

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 that on July 2, 1997, in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, the applicant was convicted of the offence of possession with intent to sell or deliver cocaine.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the Director's findings. The applicant submits a letter in which he states that he was arrested when the police found a small amount of cocaine in the house of a friend that he was visiting. In addition, the applicant states that although no drugs were found on him he was arrested with everyone in the house. Furthermore, the applicant states that he was assigned a public defender because he did not have enough money to hire his own attorney. The applicant states that the public defender recommended that he accept 120 days imprisonment instead of going to trial. Finally, the applicant states that since the day he was released he has been a law-abiding citizen.

The fact remains that the applicant was convicted of the offence of possession with intent to sell or deliver cocaine. The AAO cannot go behind a conviction regardless of the circumstances. The applicant is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II) based on his conviction of any law relating to a controlled substance and 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.

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 Director to deny the application will be affirmed.

ORDER: The Director's decision is affirmed.