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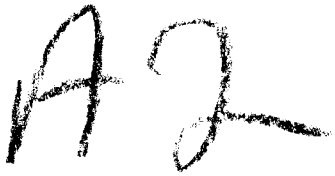
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services



[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: JAN 13 2006

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:

[redacted]

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. *See District Director's Decision* dated May 25, 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.

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 property where the applicant was arrested does not belong to him. In addition, counsel states that the applicant was not charged with sale or attempted sale or trafficking of a controlled substance, but only with simple possession, a third degree felony, which was later dismissed. Furthermore, counsel states that the amount of possession was not clearly established or determined and that even if there were 10 lbs of cannabis, the narcotic was not in possession of the applicant because he was not the owner of the house and he had no control over ownership of the narcotic. Additionally, counsel states that in order to conclude or to have a "reason to believe" that the alien is a drug trafficker there should be remuneration for the sale or distribution of the drugs. Counsel states that the Board of Immigration Appeals (BIA) has equated "reason to believe" with "probable cause." Finally, counsel states that the applicant was simply working in the house as an electrician at the time a police officer entered the house and he was not selling or attempting to sell the drugs. Consul concludes that the application should be

approved because the applicant is not excludable for having been engaged in trafficking of drugs or believed to be a drug trafficker.

Counsel's statements are not persuasive. The record reflects that on October 19, 2003, the applicant was arrested and charged with unlawful possession of marijuana. Although the case was nolle prosequi, the arresting report indicates that the applicant was arrested at a residence for possession of approximately 10 lbs or marijuana. The arresting report further indicates that the applicant stated that he was the owner of the residence and that the plants in the residence were marijuana plants. The police report further indicates that the applicant gave his consent to search the residence and the arresting officers discovered approximately 10 lbs of marijuana. In his brief counsel does not address the applicant's statement to the police officer that he was the owner of the house.

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).

Although the applicant was not charged with the selling or attempted selling of a controlled substance the circumstances surrounding his arrest and the quantity of the controlled substance involved provide substantial and probative evidence to support the District Director's finding the applicant excludable pursuant to 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 District Director to deny the application will be affirmed.

ORDER: The District Director's decision is affirmed.