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U.S. Department of Justice  
Immigration and Naturalization Service

Public Copy

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



FILE



Office: Miami

Date: JUL 18 2002

IN RE: Applicant:



APPLICATION:

Application by Cuban/Haitian Refugee for Permanent Residence  
Pursuant to Section 202 of the Immigration Reform and Control  
Act of 1986 (Pub. L. 99-603)

IN BEHALF OF APPLICANT:



Confidential data deleted to  
prevent identity unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Miami, Florida, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is before the Associate Commissioner on a motion to reopen. The motion will be dismissed, and the decision dismissing the appeal will be affirmed.

The applicant is a native and citizen of Haiti who entered the United States in October 1980 without inspection. On June 11, 1987, he was arrested and charged with Possession of Cocaine and Possession of Marijuana. On February 12, 1988, he was found guilty of both charges and placed on probation. The applicant filed an application for adjustment of status under section 202 of the Immigration Reform and Control Act of 1986 (IRCA) (Pub. L. 99-603).

The district director determined that the applicant was inadmissible to the United States under former section 212(a)(23) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(23), recodified as section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. 1182(a)(2)(A)(i)(II), and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal on July 31, 1992.

On motion, counsel states that the applicant was placed in deportation proceedings, and the proceedings were terminated on February 2, 1995, after the applicant succeeded in having both criminal convictions vacated on January 30, 1995, by the court that convicted him.

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

(A)(i)(II) any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of 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), is inadmissible.

(C) any alien who the consular or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

Section 212(h) of the Act provides that the Attorney General may, in his discretion, waive this ground of inadmissibility insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana. The applicant's conviction involved cocaine.

Expunction of drug-related convictions will not eliminate the convictions as a bar to legalization eligibility. See Matter of Ibarra-Obando, 12 I&N Dec. 576 (BIA 1966; A.G. 1967); Matter of G-,

9 I&N Dec. 159 (BIA 1960; A.G. 1961); Matter of A-F-, 8 I&N Dec. 429 (BIA, A.G. 1959). Furthermore, any pardon granted by the President of the United States or by the governor of any state would likewise be ineffective in overcoming the applicant's inadmissibility under section 212(a)(2)(A)(i)(II). See Matter of Lindner, 15 I&N Dec. 170, 171 (BIA 1975); Matter of Lee, 12 I&N Dec. 335, 337 (BIA 1967); Matter of Yuen, 12 I&N Dec. 325, 327 (BIA 1967).

In Matter of Roldan, 22 I&N Dec. 512 (BIA 1999), The Board of Immigration Appeals held that the policy exception in Matter of Manrique, which accorded Federal First Offender treatment to certain drug offenders is superseded by the enactment of section 101(a)(48)(A) of the Act, 8 U.S.C. 1101(a)(48)(A). Under the statutory definition of the term "conviction," no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. Once an alien is subject to a "conviction" as that term is defined in section 101(a)(48)(A) of the Act, the alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt through a rehabilitative procedure.

The applicant filed the present application on January 26, 1996, presumably under section 202 of IRCA.

8 C.F.R. 245.6(a), in effect in 1988, provided, in part that...No applications for benefits under section 202 of Pub. L. 99-603 may be filed after November 5, 1988.

Since November 5, 1988, fell on a Saturday, the cut-off date was November 7, 1988. The above application was filed after that cut-off date.

The applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of possession of cocaine and no waiver is available for such a violation.

In view of the foregoing, the applicant is ineligible for adjustment of status to permanent resident pursuant to section 202 of IRCA. The motion will be dismissed and the order dismissing the appeal will be affirmed.

**ORDER:** The motion is dismissed. The order of July 31, 1992, dismissing the appeal is affirmed.