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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, ROOM 20 Mass. 3/F
425 I Street N.W.
Washington, D.C. 20536

SEP 29 2003

FILE [REDACTED] Office: Miami

Date:

IN RE: Applicant: [REDACTED]

APPLICATION: Application by Cuban/Haitian Refugee for Permanent Resident under Section 202 of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603)

ON BEHALF OF APPLICANT:

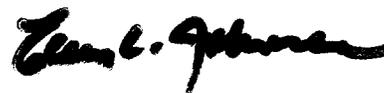
INSTRUCTIONS:

This is the decision 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.

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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida. An appeal and subsequent motion to reopen were dismissed by the Associate Commissioner for Examinations (now Administrative Appeals Office (AAO)). The matter is now before the AAO on a motion to reconsider. The motion will be rejected.

The applicant is a native and citizen of Haiti who indicates that he arrived in the United States in October 1980. He was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act, (the Act), § 8 U.S.C. 1182(a)(2)(A)(i)(II), for having been convicted of Possession of Cocaine and Marijuana on February 12, 1988. The applicant filed an Application for Adjustment of Status under section 202 of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603).

The district director concluded that the applicant was inadmissible under former section 212(a)(23) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(23), presently codified as section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), and denied the initial application on July 3, 1990. The Associate Commissioner affirmed that decision on appeal on July 31, 1992, and dismissed a subsequent motion to reopen on July 18, 2002.

On second motion, counsel emphasizes that the conviction was vacated and that the request to reopen the initial application *sua sponte* went unanswered.

The regulation at 8 C.F.R. § 103.5(b) states:

Motions to reopen or reconsider denials of special agricultural worker and legalization applications. Upon the filing of an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit), the Director of a Regional Processing Facility or the consular officer at an Overseas Processing Office may *sua sponte* reopen any proceeding under his or her jurisdiction opened under Part 210 or 245a of this chapter and may reconsider any decision rendered in such proceeding. The new decision must be served on the appellant within 45 days of receipt of any brief and/or new evidence, or upon expiration of the time allowed for the submission of a brief. The Associate Commissioner, Examinations, or the Chief of the Administrative Appeals Unit may *sua sponte* reopen any proceeding conducted by that Unit under Part 210 or 245a of this chapter and reconsider any decision rendered in such proceeding. *Motions to reopen a proceeding or reconsider a decision under Part 210 or 245a of this chapter shall not be considered.*

[Emphasis added.] The AAO finds that the decision to deny the original 1988 application was correct based on the facts as they



existed at the time and finds no reason to reopen sua sponte. As the regulations do not allow a motion to reconsider in this matter, the motion is rejected.

ORDER: The motion is rejected.