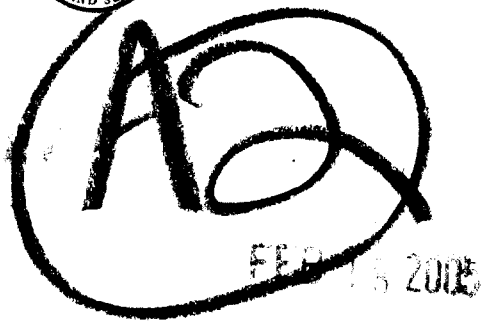
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

invasion of personal privacy

U.S. Citizenship and Immigration Services



[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date:

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 APPLICANT:

[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 she 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 June 29, 2004.

> 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 reveals on September 7, 1996, the applicant was arrested by the Albuquerque Police Department and charged with trafficking in a controlled substance, to wit: cocaine. Although the case was [redacted] i, the arrest report indicates that the arresting officer observed the applicant conducting a drug transaction. The Officer witnessed the applicant giving a small item from her mouth to an individual in a car in exchange for money. This individual was arrested and he admitted giving the applicant money in exchange for a white rock, which tested positive for cocaine.

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 District Director based his decision on an arrest report which ". . . on its own, can not be considered reasonable, none the less substantial or probative." In addition counsel states that the District Director erroneously stated ". . . an inference of trafficking is inescapable when one considers the amount of marijuana involved." Counsel states that the applicant's case did not involve large amounts of marijuana, which would create a reasonable inference of trafficking, but only a small amount of crack cocaine.

Black's Law Dictionary defines "traffic" as "[c]ommerce; trade; sale or exchange of merchandise, bills, money, and the like. The passing of goods or commodities from one person to another for an equivalent in goods or money." Black's Law Dictionary, 1340 (5th ed. 1979). "Trafficking" is in turn defined as: "Trading or dealing in certain goods and commonly used in connection with illegal narcotic sales." Id. Essential to the term in this sense is its business or merchant nature, the trading or dealing of goods, although only a minimal degree of involvement may be sufficient under the precedents of this Board to characterize an activity as "trafficking" or a participant as a "trafficker." *See Matter of Roberts*, 20 I&N Dec. 3148 (BIA 1990); *Matter of P-*, 5 I&N Dec. 190 (BIA 1953). "Illicit" is defined as "not permitted or allowed; prohibited; unlawful; as an illicit trade." Black's Law Dictionary, supra, at 673. Giving effect to this plain meaning, the use of "illicit" in section 101(a)(43) of the Immigration and Nationality Act simply refers to the illegality of the trafficking activity. Cf. Bassett v. United States INS, 581 F.2d 1385 (10th Cir. 1978).

Counsel's arguments overall are not persuasive. The arrest report is reasonable, substantial and probative evidence. It describes the facts and clearly reveals that the applicant was involved in the illicit trafficking of a controlled substance. The AAO agrees with counsel in his assertion that the District Director erred in stating "... an inference of trafficking is inescapable when one considers the amount of marijuana involved," as this case does not involve a large amount of marijuana. However, the AAO finds the error to be harmless. The controlled substance in the applicant's case was crack cocaine and there is sufficient evidence to find that the applicant was an illicit trafficker of a controlled substance. Although the applicant was not convicted of the charges filed against her, the applicant is subject to the provisions of section 212(a)(2)(C) of the Act for which there is no waiver.

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.