identifying data deleted to prevent clearly unwarranted invasion of personal privacy
PUBLIC COPY

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

A2

[redacted]

FILE: [redacted] Office: HIALEAH FIELD OFFICE Date: SEP 22 2010

IN RE: Applicant: [redacted]

APPLICATION: Application for Adjustment of Status to that of Person Admitted for Permanent Residence under Section 1 of the Cuban Refugee Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Hialeah, Florida, who certified her decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The application will be denied.

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 field office 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 field office director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly.

Section 212(a)(2) of the Act states in pertinent part:

(C) Controlled substance traffickers.-

any alien 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 the applicant was arrested by the Columbus, Ohio Police Department on September 25, 1994 and was indicted for violating section 2925.03 of the Ohio Revised Code, knowingly possess a controlled substance included in Schedule I to wit: diacetylmorphine, commonly known as heroin, in an amount equal to or exceeding the bulk amount but in an amount less than three times that amount, contrary to the statute in such cases made and provided and against the peace and dignity of the State of Ohio.

On May 12, 1995, the Court of Common Pleas, Franklin County, Ohio issued a Nolle Prosequi on the indictment. The record does not include the underlying arrest report or further information regarding the circumstances of the applicant's arrest. In a prior proceeding before United States Citizenship and Immigration Services (USCIS), counsel for the petitioner provided the affidavits of the applicant's mother and father wherein each affiant indicated generally that their son was a person of good moral

character, was innocent of involvement in drug related matters, and was at the wrong place at the wrong time. Their statements do not indicate that they witnessed the arrest or had probative information regarding the circumstances of the arrest. Thus, their statements are not probative in this matter. The record does not include an explanatory statement from the applicant regarding the arrest or providing any information that contravenes or otherwise explains the information set out in the indictment.

The record also includes evidence of the applicant's arrest on August 9, 2000 for petit larceny, theft, a misdemeanor in Miami-Dade County, Florida. This matter was also disposed by Nolle Prosequi on May 4, 2001.

The field office director, in her January 11, 2010 decision, determined that there is sufficient reasonable, substantial, and probative evidence to support a finding that the applicant is an alien who is or has been an illicit trafficker in a controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in a controlled substance. Although the field office director noted that the applicant's 1994 case had been closed, the field office director determined that the closure of the case did not alter the original facts of the case.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the field office director's findings. Neither the applicant nor counsel submitted further evidence. Thus, the record on certification is considered complete.

In this matter, the record does not include any statement from the applicant describing the circumstances of his arrest for aggravated trafficking. The indictment in this matter, without contravening information including testimony from the applicant, is sufficient reasonable, substantial, and probative evidence to support a finding that the applicant was an illicit trafficker of a controlled substance. Although the applicant was not convicted of the charges filed against him, the applicant is subject to the provision of section 212(a)(2)(C) of the Act for which there is no waiver.[1]

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 field office director to deny the application will be affirmed.

ORDER: The director's decision is affirmed. The application is denied.

[1] The AAO notes that a conviction is not required to find an applicant inadmissible under section 212(a)(2)(C) of the Act. *See Matter of Rico*, 16 I&N Dec. 181 (BIA 1977).