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

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FILE:



Office: MIAMI, FLORIDA

Date: JUN 16 2005

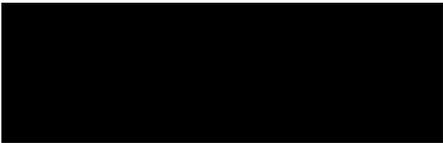
IN RE:

Applicant:



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:



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. Wieman, 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 sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II) and 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 August 22, 2004.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. On certification counsel states that the applicant was sentenced to 14 to 24 months of imprisonment and was paroled after serving 10 months of this sentence. In addition counsel states that the applicant pled guilty based on the advice of his previous counsel. Furthermore counsel states that the applicant has had no criminal record since 1986, has conducted himself as a law-abiding citizen, has achieved success in his personal and business endeavors and is well respected in his community. Finally counsel states that given the length of time that has transpired since the applicant's criminal conviction there should be no concern regarding any future recidivism.

A review of the record of proceedings reveals that the Director of the Southern Service Center denied a previously filed application for adjustment of status on December 19, 1994. The Director's decision was affirmed by the AAO on August 17, 1995. The record further reveals that the Miami District office denied another application for adjustment of status on March 27, 2000 for lack of prosecution.

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

(A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) 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).

....

(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 reflects that on October 9, 1986, in New York the applicant was arrested and charged with count 1, criminal sale of a controlled substance, to wit: cocaine, and count 2, criminal possession of a controlled substance. On January 16, 1987, in the County Court of Nassau County, in and for the County of Nassau in the Court House in Mineola, New York, the applicant entered a plea of guilty to count 1 and was convicted of the criminal sale of a controlled substance and sentenced to imprisonment for a period of one to three years.

As noted above the applicant was convicted for the offense of criminal sale of a controlled substance. His conviction was never vacated and therefore the applicant is inadmissible to the United States, pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act, regardless of the time that has passed since his conviction. Even if the applicant pled guilty based on bad advice by his previous attorney this does not change the fact that he was convicted of a crime relating to a controlled substance.

There is no waiver available to an alien found inadmissible under section 212(a)(2)(A)(i)(II) of the Act, except for a single offense of simple possession of thirty grams or less of marijuana. The applicant does not qualify under this exception. In addition 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.