

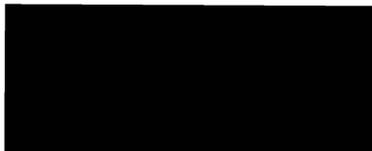
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U.S. Citizenship
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Services

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FILE:



Office: NEWARK, NEW JERSEY

Date:

23 2006

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 APPLICANT:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Newark, New Jersey, 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 an 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 section 212(a)(1)(A)(iv) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(1)(A)(iv), for being a drug abuser or addict. In addition, the District Director found that the applicant pled guilty to possession of a controlled dangerous substance. 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 May 3, 2006.

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. No additional evidence has been entered into the record.

Section 212(a)(1) of the Act states in pertinent part:

(1) Health-related grounds.-

(A) In general.-Any alien-

(iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict, is inadmissible.

In order to support a finding of inadmissibility under section 212(a)(1)(A)(iv) of the Act, the District Director must first establish that a civil surgeon or CIS panel physician medically determined the applicant to be a drug abuser or addict. In the present case, the District Director's decision indicates that his finding was based on the applicant's conviction for possession of cocaine.

The Technical Instructions for Medical Examination of Aliens in the United States (Instructions) state that:

[T]he Centers for Disease Control (CDC), United States Public Health Service (PHS), is responsible for ensuring that aliens entering the United States do not pose a threat to the public

health of this country. The medical examination is one means of evaluating the health of aliens applying for admission or adjustment of status as permanent residents in the United States.

See Instructions at preface.¹ The Instructions state further that:

The civil surgeon is responsible for reporting the results of the medical examination and all required tests on the prescribed forms. The civil surgeon is not responsible for determining whether an alien is actually eligible for adjustment of status; that determination is made by the [CIS] officer after reviewing all records, including the report of the medical examination.

The Instructions discuss drug abuse or addiction as one of the health-related grounds of exclusion that the civil surgeon must examine and identify during the medical examination. The Instructions indicate further that:

Findings of drug abuse or addiction should be indicated in the "Remarks" section of the medical report form. The civil surgeon should indicate the specific drug that is/was being used and the last time it was used if the patient has discontinued its use.

The AAO notes that the record of proceeding contains two Medical Examinations of Aliens Seeking Adjustment of Status (Form I-693), dated April 12, 1999, and November 25, 2005. Neither of the Forms I-693 contains a medical conclusion or information to indicate that the applicant was deemed by the examining physician to be a drug abuser or addict, and the record contains no other evidence to indicate that the applicant was determined to be a drug abuser or addict by a civil surgeon or panel physician.

Based on the above, the AAO finds that the District Director's determination that the applicant is inadmissible as a drug abuser is unsupported by the medical evaluation or evidence contained in the file and that the finding is, therefore, erroneous.

The record reflects that on July 30, 2002, in the New Jersey Superior Court, Criminal Division, the applicant was convicted of the offense of possession of a controlled substance, to wit: cocaine. Therefore, although the applicant is not subject to section 212(a)(1)(A)(iv) of the Act, he is clearly inadmissible pursuant to of 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 a violation of any law or regulation relating to a controlled substance.

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-

(II) a violation of (or a conspiracy or attempt to violate) any law or regulations of a State, the United States, or a foreign country relating to a

¹ The Instructions can be located on the internet at:
www.cdc.gov/ncidod/dq/technica.htm and www.cdc.gov/ncidod/dq/civil.htm

controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) states in pertinent part:

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana. . .

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

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.