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U.S. Citizenship
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Services

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FILE:



Office: NEW ORLEANS, LOUISIANA

Date:

MAR 05 2009

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)

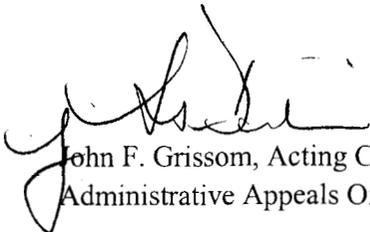
ON BEHALF OF APPLICANT:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director (FOD), New Orleans, Louisiana, who certified his 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.

A review of the record reveals the following facts and procedural history: The applicant entered the United States on or about May 11, 1980. He was paroled into the United States on May 14, 1980 so that he could apply for asylum. On July 23, 1984, the applicant was arrested for possession of marijuana in excess of twenty grams with intent to sell in violation of Florida Statute 893.13(1)(a). The applicant was indicted but found not guilty of this charge on February 26, 1985. On February 10, 1986, the applicant submitted a Form I-485 to adjust his status under section 1 of the CAA. The director denied the application because, although the applicant was found not guilty of the charge of marijuana possession with intent to sell, the arrest report gave the director reason to believe that the applicant was an illicit trafficker in a controlled substance. The director certified his decision to AAO, and the AAO concurred with the director's findings. The applicant submitted the instant Form I-485 on June 28, 2002.

In a July 25, 2008 decision, the director determined that the applicant was not eligible for adjustment of status because the record contained sufficient evidence to reach a reasonable conclusion that the applicant was an illicit trafficker in a controlled substance. The director additionally noted that the applicant failed to submit police clearances from the jurisdictions where the applicant lived for at least six months since his arrival to the United States. The director denied the application and certified his decision to the AAO for review. The director informed the applicant that he had 30 days to supplement the record with any evidence that he wished the AAO to consider. Neither the applicant nor his attorney has provided any evidence for consideration.

As a preliminary matter, the AAO will provide the narrative from the arresting officer's report detailing what transpired when the applicant was arrested on July 23, 1984. It is this narrative that the director and the AAO, in a prior decision, relied upon to conclude that there was reason for the Service to believe that the applicant was a trafficker in a controlled substance.

Affiant clocked a red 1975 Ford 4dr Once stopped I approached said vehicle. [The applicant] was the driver [W]hile standing by the driver['s door (window open) I detected the odor of cannabis. The vehicle was sitting low in the rear. I asked [the applicant] to exit the vehicle [O]nce the trunk was opened I detected a strong odor of

cannabis. There were 2 suitcases in the trunk. There was also some greenish-brown vegetative residue on the trunk floor. I opened the suitcases. The brown suitcase contained 24 clear plastic zip lock bags with a greenish-brownish vegetation in them, which I suspected to be cannabis. A field test of the contents of one of the bags proved positive for cannabis sativa L. There was also a grey suitcase in the trunk. It contained 22 clear plastic zip lock bags with a greenish-brown vegetation in them, suspected to be cannabis. I placed both subjects under arrest. . . . Further investigation of the vehicle revealed under the rear seat taped to the springs were 21 clear plastic zip lock bags containing a greenish-brown vegetation suspected to be cannabis. In the trunk a sheet metal false bottom was found under a throw r[u]g. It was screwed in & had fresh putty around it. Once removed it revealed a recessed area containing 38 clear plastic zip lock bags with greenish-brown vegetation in each suspected to be cannabis. In the glove box was found a Raven .25 cal. Auto. Pistol . . . with a loaded magazine beside it. . . . The total gross weight of the suspected cannabis minus both of the suitcases was approx. 103 pounds. . . . On the way to jail [the applicant] told me that the cannabis was his

Section 212(a)(2) of the Immigration and Nationality Act (INA) states:

(C) Controlled substance traffickers- Any alien who the consular officer or the Attorney General knows or has reason 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

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

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).

The arrest report that the director and the AAO relied upon 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 controlled substance in this matter was a large amount of marijuana – 103 pounds. 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 him, the applicant is subject to the provisions of section 212(a)(2)(C) of the Act for which there is no waiver of inadmissibility.

The applicant is also ineligible to adjust his status because he failed to provide the requested and required police clearances. In June 2008, the director requested that the applicant submit police clearances from each jurisdiction where the applicant lived for at least six months since entering the United States. In response, the applicant submitted a letter from the sheriff in Scott County, Mississippi. The applicant's record, however, indicates that he lived in other counties in Mississippi as well as the States of Florida and New Jersey since his arrival into the United States. An application for adjustment of status under section 1 of the CAA must include a clearance from the local police jurisdiction for any area in the United States where the applicant has lived for six months or more since his or her 14th birthday. 8 C.F.R. § 245.2(a)(3)(iv). As the applicant has not submitted the required police clearances from the jurisdictions where the applicant lived, the application must be denied. Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. The applicant has not met his burden. Accordingly, the AAO affirms the decision of the director to deny the applicant's application to adjust status pursuant to section 1 of the CAA.

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