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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



A2

DATE:

**SEP 19 2012**

Office: NEWARK

FILE:



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:**

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Field Office Director, Newark New Jersey, denied the application to adjust status and certified her decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The application remains 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), Pub. Law No. 89-732 (Nov. 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.

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

(i) In general.-Except as provided in clause (ii), any 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 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)), is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that the Secretary 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 . . . .

The applicant was paroled into the United States on or about June 16, 1980. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on November 7, 2011. Although the applicant indicated at the time of his interview on March 23, 2012, to have been arrested three times in the United States, he only submitted the requested certified court documents for two of the arrests. Specifically:

- On June 25, 1984, in the Bergen County Superior Court of New Jersey, the applicant pled guilty to three counts of burglary of a motor vehicle, in violation of NJS 2C:18-2. The applicant was ordered to pay a fine and was placed on probation for two years (each count to run concurrent with each other). [REDACTED]

- On February 28, 1986, in the Hudson County Superior Court of New Jersey, the applicant was convicted of two counts of possession of a controlled substance (cocaine and phencyclidine) in violation of RS24:21-20(a)(1). The applicant was sentenced to serve 364 days in jail and was placed on probation for five years. [REDACTED]

On April 14, 2012, the director denied the Form I-485, determining that the applicant's possession of controlled substance conviction rendered him inadmissible under section 212(a)(2)(A)(i)(II) of the Act and that there was no waiver available for this ground of inadmissibility. The director also determined that the applicant's drug conviction did not meet the criteria for a waiver under section 212(h) of the Act and certified her decision to the AAO. The director informed the applicant that he had 30 days to supplement the record with any evidence that he wished the AAO to consider. The applicant has not submitted any further information or evidence on certification. The record is, therefore, considered complete.

At the time of his Form I-485 interview on March 23, 2012, the applicant admitted that he had also been arrested for smoking marijuana to which he received probation. The director, in her decision, noted that the applicant had been convicted in the Union City Municipal Court of New Jersey of possession of marijuana on March 21, 1985, and he received a 90-day sentence. The record of proceeding, however, does not contain the court disposition to support the director's decision. Therefore, the AAO cannot uphold the director's finding regarding this conviction.

The applicant's conviction related to cocaine possession renders him inadmissible under section 212(a)(2)(A)(i)(II) of the Act. There is no waiver of inadmissibility available to the applicant because his controlled substance violations did not involve mere possession of 30 grams or less of marijuana.

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 remains denied.