

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
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: ORLANDO

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, Orlando, Florida, 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.

An alien is inadmissible if a consular officer or Secretary knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance 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. Section 212(a)(2)(C)(i) of the Act.

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The applicant was paroled into the United States in 2009. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on September 29, 2010. The record of proceeding indicates that on or about September 25, 2010, the applicant was arrested

by the Orange County Sheriff's Office of Florida for two counts of sell/manufacture/deliver a controlled substance, a violation of Florida Statute 893.13(1)(a)(2), a felony of the third degree, and possession of marijuana over 20 grams, a violation of Florida Statute 893.13(6)(a), a felony of the third degree. On January 27, 2011, the applicant pled *nolo contendere* to violating Florida Statute 893.13(6)(a) and to one count of violating Florida Statute 893.13(1)(a)(2).¹ Adjudication of guilt was withheld. For violating Florida Statute 893-13(1)(a)(2), the applicant was sentenced to time served, ordered to pay a fine and was placed on probation for three years. For violating Florida Statute 893.13(6)(a), the applicant was sentenced to time served.

The applicant pled *nolo contendere* to each charge, and the judge ordered some form of penalty and restraint on the applicant's liberty. Therefore, for immigration purposes, the applicant has been convicted of the offenses within the meaning of section 101(a)(48)(A) of the Act.

On April 30, 2012, the director denied the Form I-485, determining that the applicant's drug violations 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 was inadmissible under section 212(a)(2)(C)(i) of the Act on the basis there was a reason to believe that the applicant is or has been an illicit trafficker in a controlled substance. The director certified her decision to the AAO, and 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.

The record of proceeding, in this case, is devoid of the arrest report or indictment for the drug violations committed on or about September 25, 2010. As the record does not contain the arrest report or indictment, which gives a detailed narrative of the circumstances that led up to the arrest, the AAO cannot uphold the director's finding that the applicant is inadmissible under section 212(a)(2)(C)(i) of the Act.

The applicant's conviction of sell/manufacture/deliver a controlled substance 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 violation did not involve mere possession of 30 grams or less of marijuana.

Pursuant to section 291 of the 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, in that the applicant is inadmissible only under section 212(a)(2)(A)(i)(II) of the Act. The application remains denied.

¹ The remaining count of sell/manufacture/deliver a controlled substance was dismissed.