



U.S. Department of Justice

Immigration and Naturalization Service

C

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D. C. 20536



Public Copy

FILE: [Redacted]

Office: Miami (Tampa)

Date: JAN 21 2000

IN RE: Applicant: [Redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

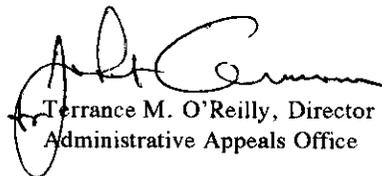
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, 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 of November 2, 1966. This Act provides for the adjustment of 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, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director determined that the applicant was ineligible for adjustment of status because he is amenable to deportation under sections 237(a)(2)(B)(i) and 237(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1227(a)(2)(B)(i) and 8 U.S.C. 1227(a)(2)(C), and denied the application accordingly.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(2) of the Act provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

(A)(i) 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).

(C) Any alien who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

The district director noted that an application for adjustment of status under section 1 of the Cuban Adjustment Act of November 2, 1966, previously filed on May 12, 1986, was denied by the district director and subsequently affirmed by the Associate Commissioner in March 1990 after finding that the applicant was inadmissible to the

United States pursuant to section 212(a)(23) of the Act (now section 212(a)(2)(A)(II) and 212(a)(2)(C) of the Act) based on his convictions on May 12, 1986 of trafficking in cocaine, conspiracy to traffic in cocaine, delivery of cocaine, and possession of cocaine.

The district director further noted that the file reflects an arrest on January 19, 1993 by the Hillsborough County Sheriff's Office for trafficking in cocaine and possession of a firearm. He further stated that on August 16, 1993, the applicant was found inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act by an immigration judge. The district director, therefore, found the applicant amenable to deportation under sections 237(a)(2)(B)(i) and section 237(a)(2)(C) of the Act.

The record of proceeding contains a "Report Generation, Record of Arrest" relating to the applicant. While this report does not show where it was issued and by whom, the report reflects that on January 19, 1993, under Booking Number 93002250, the applicant was arrested for (1) trafficking in cocaine (28 to 200 grams), "5 yrs FSP H/FDOC;" and (2) felon in possession of a firearm, "5 yrs FSP H/FDOC." Because it is not clear whether the applicant was convicted of these crimes and that he was ordered removed by the Attorney General based on the convictions of these crimes, the district director's findings that the applicant was amenable to deportation under sections 237(a)(2)(B)(i) and 237(a)(2)(C) of the Act will not be addressed at this time.

However, the applicant is inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the of the Act based on his convictions on May 12, 1986 of possession and trafficking of cocaine. There is no waiver available to an alien found inadmissible under these sections except for a single offense of simple possession of 30 grams or less of marijuana. The applicant does not qualify under this exception.

The applicant is ineligible for adjustment of status to permanent resident pursuant to section 1 of the Act 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.