



U.S. Department of Justice

Immigration and Naturalization Service

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



MAR - 8 2001

FILE: [Redacted]

Office: Miami

Date:

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

INSTRUCTIONS:

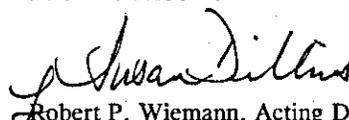
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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


Robert P. Wiemann, Acting 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 found the applicant inadmissible to the United States pursuant to section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(C), because he had reason to believe that the applicant is or has been an illicit trafficker in a controlled substance. The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

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

Section 212(a)(2) of the Act, 8 U.S.C. 1182(a)(2), 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 --

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(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 record reflects the following:

1. On October 23, 1987, in the United States District Court, Southern District of Florida, Case No. [REDACTED] and Superseding Indictment No. [REDACTED] the applicant and a co-defendant were indicted for Count 1, knowingly and intentionally possess with intent to distribute a controlled substance (in excess of 5 kilograms of cocaine); and Count 2, did knowingly and intentionally combine, conspire, confederate and agree with each other and with persons unknown to possess with intent to distribute a controlled substance (in excess of 5 kilograms of cocaine). On May 31, 1988, the applicant and the co-defendant were acquitted of the charges.

2. On May 1, 1990, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with aggravated assault. The applicant was placed on a Pretrial Diversion Program, and on November 16, 1990, a "nolle pros" was entered on the case.

3. On July 21, 1991, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with Count 1, possession of a firearm by a convicted felon; Count 2, carrying a concealed firearm; and Count 3, driving under the influence. On August 21, 1991, a "no information" was entered on the case.

4. On September 14, 1993, in Dade County Florida, Case No. [REDACTED] the applicant was arrested and charged with Count 1, battery on spouse; and Count 2, resisting arrest without violence. On February 1, 1994, the court entered a nolle prosequi as to Count 2. However, the court's final disposition as to Count 1 is not reflected in the record. Spousal abuse has been found to be a crime involving moral turpitude and a conviction of this crime may render the applicant inadmissible to the United States pursuant to section 212(a)(2)(a)(i)(I) of the Act. See Grageda v. INS, 12 F.3d 919 (9th Cir. 1993) Calif. Penal Code 273.5(a).

Despite the fact that the applicant was acquitted of the charges listed in paragraph 1 above, the district director, citing Matter of Rico, supra, and Matter of Tillighast, 27 F.2d 580 (1st Cir., 1928), determined that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act because he had reason to believe the applicant 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.

The district director based his conclusion on the information or criminal complaint which reflects that the applicant participated in transporting over 5 kilograms of cocaine. The criminal complaint was cited in its entirety by the district director in his decision. Therefore, the criminal complaint or report will not be repeated here.

It has been held in Matter of Rico, 16 I&N Dec. 181 (BIA 1977), that an actual conviction of a drug-trafficking offense or violation is not necessary to establish the ground of inadmissibility under section 212(a)(2)(C) of the Act. Further, one of the factors considered by the Federal Courts to determine whether possession of a controlled substance shall also be deemed sufficient to support a finding that the individual has also engaged in illicit drug trafficking, is the amount of illicit drugs discovered. If the amount of the illicit drug is large enough, trafficking may be inferred on this basis alone. Matter of Franklin, 728 F.2d 994 (8th Cir., 1984).

The intent to distribute a controlled substance has been inferred solely from possession of a large quantity of the substance. United States v. Koua Thao, 712 F.2d 369 (8th Cir. 1983) (154.74 grams of opium); United States v. DeLeon, 641 F.2d 330 (5th Cir. 1980) (294 grams of cocaine); United States v. Grayson, 625 F.2d 66 (5th Cir. 1980) (413.1 grams of 74% pure cocaine); United States v. Love, 559 F.2d 107 (5th Cir. 1979) (26 pounds of marijuana); United States v. Muckenthaler, 584 F.2d 240 (8th Cir. 1978) (147 grams of cocaine).

Generally speaking, intent to distribute is established when the controlled substance is either found on the person of the accused, or in a vehicle or boat driven or occupied by the accused, or in a dwelling where the accused resided or visited frequently. The record reflects that the applicant transported 80 boxes of flowers (in which approximately 5 kilograms of cocaine were previously found by Customs officers hidden in the boxes) from the airport to a white concrete block structure in the rear of a building in Hialeah, Florida. The applicant and a co-defendant made counter-surveillance of the area before the boxes of flowers were unloaded from the truck. While the boxes were being unloaded by the applicant, the co-defendant was observed driving up and down adjacent streets and performing U-turns in a manner consistent with counter-surveillance.

The circumstances surrounding the arrest, the large amount of controlled substance discovered in the boxes, and the fact that the applicant was an active participant in the transportation of the controlled substance, are sufficient factors to support the district director's conclusion that there was reason to believe that the applicant 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.

The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act, whether or not he was actually convicted. Matter of Rico, supra. There is no waiver available to an alien found inadmissible under section 212(a)(2)(C) of the Act based on trafficking in a controlled substance. Further, the applicant was offered an opportunity to submit

evidence in opposition to the district director's finding of inadmissibility. No additional evidence has been entered into the record.

Although not addressed by the district director, the record reflects that on June 14, 1984, at Miami International Airport in Florida, the applicant (together with his family) sought to gain entry into the United States by presenting a Costa Rican passport belonging to another person into which his photograph had been substituted. In a sworn statement before an officer of the Service, the applicant admitted that he paid \$2000 to someone in Costa Rica for the purchase of three Costa Rican photo-switched passports. On July 6, 1984, an immigration judge found the applicant inadmissible to the United States pursuant to former sections 212(a)(19) and 212(a)(20) of the Act, 8 U.S.C. 1182(a)(19) and 8 U.S.C. 1182(a)(20), now sections 212(a)(6)(C) and 212(a)(7) of the Act.

The applicant is ineligible for adjustment of status to permanent residence 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.