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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

02 JUL 2002

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:

[redacted]

Public Copy

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

Helen E. Crawford for

Robert P. Wiemann, 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 Colombia 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, 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, 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. The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

The district director determined that the applicant was ineligible for adjustment of status as the spouse of a lawful permanent resident who adjusted under section 1 of the Act of November 2, 1966, because she falls under the purview of section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(C). The district director, therefore, denied the application.

In response to the notice of certification, counsel asserts that the Service failed to carefully review the facts; nor did the decision make reference to the new evidence, in the form of letters and/or statements, which reflects the applicant's model behavior after the arrest. Counsel further asserts that all the charges set forth in the indictment against the applicant were dismissed, and no other allegations or charges were filed against her.

Pursuant to section 212(a)(2)(C) of the Act, 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 to the United States.

On January 24, 1989, in the United States District Court for the Central District of California, Case No. CR 89-49, the applicant, in a 6-count indictment against 6 defendants, was indicted for Count 1, conspiracy, and Count 6, possession with intent to distribute cocaine. On March 24, 1989, the court dismissed the indictment as to the applicant.

Despite the fact that the applicant was not convicted of the charges and that the court subsequently dismissed the indictment, the district director, citing Matter of Rico, 16 I&N Dec. 181 (BIA 1977), 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 indictment/criminal complaint filed with the United States District Court for the Central District of California, which reflects that the applicant willfully and knowingly conspired with 5 other defendants to transport 132 kilograms of cocaine, and that the applicant knowingly and intentionally possessed with intent to distribute approximately 82 kilograms of cocaine. The criminal complaint or indictment, in this case, was cited by the district director in his decision. Therefore, the indictment report will not be repeated here.

Counsel, on appeal, argues that the applicant's "only alleged participation had to do with her having waited at a certain location for the alleged contraband to be delivered," and also alleges that the applicant "possessed the contraband in a truck in the garage of the locale." Counsel asserts that the applicant was only a short-term guest in the house, this was the extent of the applicant's alleged involvement in the criminal activity, no other allegations or charges were filed against her, and that all the charges set forth in the indictment against the applicant were dismissed. Counsel claims that the charges were "dismissed for a reason, the reason being lack of sufficient, reasonable or probative evidence to support the findings." Counsel, however, failed to submit the reason for dismissal from the court to establish his claim. Statements by counsel are not evidence. Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

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 circumstances surrounding the charges, and the fact that the indictment report clearly indicates that the applicant was an

active participant in the activities leading to her arrest, are sufficient factors to support the district director's conclusion that he had reason to believe the applicant is or has been an illicit trafficker in a 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 whether or not she was actually convicted. Matter of Rico, supra (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).

The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act.

Despite counsel's claim on appeal that the service failed to address the numerous letters from citizens, employers, and from the applicant's parish reflecting the applicant's model behavior after the arrest and her good standing in the community, 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, as noted by the director in his decision, the applicant failed to provide the arrest report regarding the charges as had been requested.

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 director will be affirmed.

ORDER: The director's decision is affirmed.