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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]

FILE: [redacted] Office: Miami Date: JUN 24 2002

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

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 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.

The record reflects that on August 31, 1991, in Dade County, Florida, Case No. 91-31383, the applicant was arrested and charged with Count 1, possession of cocaine; and Count 2, driving while license suspended. The applicant was also named as a co-defendant on an arrest under Case No. 91-31326, and charged with Count 1, sale of cocaine, and Count 2, possession of cocaine. On September 20, 1991, the defendant and the applicant were indicted for Count 1, possession of cocaine; and Count 2, sale, purchase, or delivery of cocaine. A "no disposition" was subsequently entered on both cases.

Although the record in this case shows that the applicant was not convicted of the charges, 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 police report which shows that the defendant, in Case No. 91-31326, flagged down an undercover officer and asked for a ride; while driving around, the defendant stated that she could get the officer 1/2 gram of cocaine for $20; the defendant got the officer's beeper number and

he gave her $20 (city funds); several minutes later the defendant called the officer to pick her up and advised that her friend (co-defendant/applicant) was going to drop off the cocaine at her residence; upon arrival, the applicant was waiting for the defendant in front of her residence; the officer observed the applicant give the defendant the baggies and the defendant gave the applicant the money; the applicant then left in his vehicle; the defendant showed the officer 2 clear plastic baggies with suspect cocaine. At that time, the officer was advised that the applicant's vehicle was stopped by two other officers; the applicant was in possession of a suspended driver's license; the applicant was arrested under Case No. 91-31383, and an inventory of the applicant's pouch subsequent to the arrest revealed more cocaine (approximately 3 grams). The applicant was also charged with sale of cocaine and possession of cocaine as a co-defendant under Case No. 91-31326.

The record in this case shows that the applicant sold to the defendant (in Case No. 91-31326) two baggies of cocaine. United States v. Washington, 586 F.2d 1147, 1153 (7th Cir. 1978), held that proof of possession of a small amount of a controlled substance, standing alone, is an insufficient basis from which an intent to distribute may be inferred. However, the police arrest report specifically stated that the applicant actually sold two baggies of cocaine to the defendant in Case No. 91-31326 for $20 (city fund), which was witnessed by the undercover agent. That overt action of actually selling a quantity of cocaine, whatever the amount, goes well beyond mere possession of a small amount. Such an action is sufficient to support the district director's conclusion that there is 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 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.

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.