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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



FILE:



Office: Miami

Date: JUN 24 2002

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)

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

Robert P. Wiemann
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.

In response to the notice of certification, the applicant submits copies of his criminal charges and states that this case was closed for lack of evidence against him. He, therefore, requests that his case be properly reviewed and the denial of his application for adjustment of status be removed.

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.

The record reflects that on December 5, 1997, in Dade County, Florida, Case No. F97-38581, the applicant was arrested and charged with Count 1, leaving the scene of an accident; Count 2, driving under the influence (bench warrant); Count 3, possession of marijuana (over); Count 4, possession of marijuana with intent to distribute; Count 5, possession of cocaine; Count 6, possession of cocaine with intent to distribute; and Count 7, possession of drug paraphernalia. On December 24, 1997, the applicant was indicted for Count 1, possession with intent to sell or deliver cocaine; Count 2, possession with intent to sell or deliver cannabis; and Count 3, leaving scene of accident involving property damage. On July 14, 1998, a "nolle pros" was entered on the case.

Although the record in this case shows a "nolle pros" was entered on the case and 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 applicant left the scene of an accident by fleeing in his vehicle with a witness in pursuit; the applicant exited his vehicle and attempted to flee; a brief struggle ensued with the witness and the applicant was able to break free and ran between buildings; inventory of the applicant's vehicle reflects his address; officers responded to the applicant's apartment, he answered the door and stated that no one else was in the apartment; officers asked to search the apartment with K-9 team and the applicant gave his verbal permission and signed a written search release; K-9 gave a narcotics alert in open closet of bedroom where applicant was sleeping; in a paper bag in the closet, officers found 15 plastic bags containing 186 grams of marijuana, 16 bags containing 8 grams of cocaine, and numerous small bags used for packaging.

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. It was held in United States v. Franklin, 728 F.2d 994 (8th Cir., 1984), that intent to distribute may be established by circumstantial evidence. Evidence the applicant possessed a controlled substance with the requisite intent to distribute is sufficient as a matter of law, where the controlled substance is packaged in a manner consistent with distribution and/or there is evidence of paraphernalia, amount of cash, weapons, or other indicia of narcotics distribution.

Although the record in this matter indicates that a "nolle pros" was entered on the case and the applicant was not convicted of the charges, the arrest taken in conjunction with the court's indictment report, the circumstances surrounding the arrest, the fact that the controlled substance was packaged in a manner consistent with distribution and evidence of drug paraphernalia, found in the apartment where the applicant resided or visited frequently, are sufficient factors to support the district director's conclusion that there was 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.