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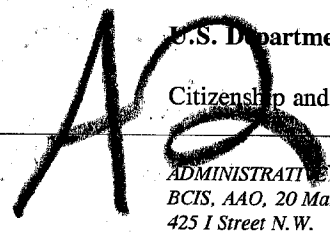

U.S. Department of Homeland Security

Citizenship and Immigration Services

*ADMINISTRATIVE APPEALS OFFICE*
*BCIS, AAO, 20 Mass, 3/F*
*425 I Street N.W.*
*Washington, D.C. 20536*

[redacted]

FILE: [redacted] Office: Miami Date: SEP 26 2003

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)

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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.

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO), for review. The district director's decision will be affirmed in part.

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 because he falls within the purview of sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I) and 1182(a)(2)(A)(i)(II). 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).

The record reflects the following:

1. On March 30, 1998, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. F97-38596, the applicant was found guilty of Count 1, leaving the scene of an accident involving injury; and Count 2, driving under the influence causing serious bodily injury. Adjudication of guilt was withheld, he was placed on probation for a period of 3 years; ordered to complete DUI school and 275 hours of community service; his

driver's license was suspended for one year; restitution to victim was reserved; and he was assessed $298 in fines and costs. Because the applicant violated the terms of his probation, on January 27, 1999, the court revoked the probation and sentenced him to 9 months in jail followed by 2 years of probation, concurrent with Case No. F98-31155 (paragraph 2 below).

2. On October 1, 1998, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. F98-31155, the applicant was indicted for Count 1, possession of cocaine; and Count 2, unlawful possession of cannabis. On January 27, 1999, the applicant was found guilty of both Counts 1 and 2, and he was sentenced to imprisonment for a term of 9 months followed by 2 years of probation, concurrent with Case No. F97-38596 (paragraph 1 above).

3. On August 16, 1998, in Dade County, Florida, the applicant was arrested and charged with driving under the influence. While it is not clear in the record the date the applicant was convicted, the court record reflects that on January 27, 1999, the applicant was sentenced to 2 years of probation.

The district director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on his convictions of leaving the scene of an accident involving injury and driving under the influence causing serious bodily injury (paragraph 1 above). However, based on a reading of sections 316.193 and 316.027 of the Florida Statutes, the crimes do not appear to rise to the level of "[a}n act of baseness, vileness, depravity in the private and social duties owing to one's fellow man. . . ." *Matter of Mueller*, 11 I&N Dec. 288 (BIA 1965). Therefore, this finding of the district director will be withdrawn.

The applicant, however, is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on his convictions of possession of cocaine and possession of cannabis. There is no waiver available to an alien found inadmissible under this section except for a single offense of simple possession of thirty grams or less of marijuana. The applicant does not qualify under this exception.

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 will be affirmed as it relates to the applicant's inadmissibility under section 212(a)(2)(A)(i)(II). The application will remain denied.

**ORDER:** The director's decision is affirmed in part as it relates to the applicant's inadmissibility under section 212(a)(2)(A)(i)(II). The application is denied.