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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FILE: [redacted] Office: Miami Date: APR 24 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

PUBLIC COPY

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 Bureau of Citizenship and Immigration Services (Bureau) 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 that 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 Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office for review. The acting 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 acting district director found the applicant inadmissible to the United States because she falls within the purview of sections 212(a)(2)(A)(i)(I) and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I) and § 1182(a)(2)(C). The acting 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 --
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> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
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> (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).
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> * * *
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> (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 March 5, 1981, in the County Court, Dade County, Florida, Case No. 81-210212, the applicant was convicted of retail theft (petty larceny). She was ordered to pay $73 in fines and costs.

2. On July 6, 1989, in the County Court, Dade County, Florida, Case No. 89-65215, the applicant was convicted of retail theft (petty larceny). Adjudication of guilt was withheld, and she was placed on probation for a period of 6 months, under the supervision of The Salvation Army Correctional Services Department.

3. On October 21, 1988, in Miami, Florida, the applicant was arrested and charged with possession of marijuana (approximately 25 pounds). On November 14, 1988, a "no information" was entered on the case.

Theft or larceny, whether grand or petty, is a crime involving moral turpitude (paragraphs 1 and 2 above). *Matter of Scarpulla*, 15 I&N Dec. 139 (BIA 1974); *Morasch v. INS*, 363 F.2d 30 (9th Cir. 1966). The applicant is, therefore, inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, based on her convictions of crimes involving moral turpitude.

Despite the fact that the applicant was not convicted of the charge for possession of marijuana and the court subsequently dismissed the case (paragraph 3 above), the acting 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 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 Service record contains an arrest report reflecting that on October 21, 1988 in Miami, Florida, pursuant to an investigation, the defendant (applicant) was asked by the arresting officers (detectives) if she would sign a consent form to have her house searched. After the applicant signed the consent form in the presence of two detectives, a search was initiated. Located inside the bedroom closet was a box and a suitcase filled with marijuana. The applicant was subsequently arrested and charged with possession of approximately 25 pounds of marijuana.

Although the record in this matter shows that a "no information" was entered on the case, and the applicant was not convicted of the crime, the Board, in *Matter of Rico*, *supra*, held 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 circumstances surrounding the arrest, and the large amount of controlled substance discovered in the residence of the applicant, are sufficient factors to support the acting 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. There is no waiver available to an alien found inadmissible under this section. Further, the applicant was offered an opportunity to submit evidence in opposition to the acting district director's finding of inadmissibility. No additional evidence has been entered into the record of proceeding.

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 acting district director to deny the application will be affirmed.

ORDER: The acting district director's decision is affirmed.