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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

FILE: [redacted] Office: Miami Date: MAY 12 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 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 pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II) 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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> * * *
>
> (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 that on May 13, 1986, in the Circuit Court, Sixteenth Judicial Circuit, County of Monroe, Florida, Case No. the applicant was indicted for Count 1, conspiracy to traffic in cocaine (400 grams or more); Count 2, trafficking in cocaine (28 grams or more, less than 200 grams); Count 3, possession of drug paraphernalia; Count 4, carrying a concealed firearm; and Count 5, possession of a firearm during the commission of a felony. On January 26, 1987, the applicant entered a plea of guilty to Count 2, possession of cocaine, a lesser included offense. She was placed on community control for a period of one year, required to pay $30 per month toward the cost of her supervision, and ordered to pay court costs in the sum of $200. A nolle prosequi was entered as to Counts 1, 3, 4, and 5.

The acting district director is correct in his determination that the applicant was inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) of the Act, based on her conviction of possession of cocaine.

The acting district director further 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 a controlled substance.

Although the record in this matter shows that the applicant was not convicted of trafficking and conspiracy to traffic in cocaine, the Board, in *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977), 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. There are sufficient facts to support a finding that there is reason to believe the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing assistor, abettor, conspirator, or colluder in the illicit trafficking in a controlled substance.

The Service record contains an arrest report reflecting that the applicant sold to a confidential informant (CI) and a DEA agent one gram of cocaine on April 3, 1986; 2 grams of cocaine on April 10, 1986; and 29.6 grams of cocaine on April 18, 1986. On April 19, 1986, the applicant met the CI and the DEA agent and made plans for the purchase and delivery of 5 pounds of cocaine for the amount of $67,500. On April 24, 1986, she met the CI and the DEA agent at a parking lot and she told the officers to go to her residence because the cocaine was there. A search warrant was executed on the residence, and the applicant was subsequently stopped and arrested based on the aforementioned buys. During the search incidental to her arrest, 60 grams of cocaine, a loaded .25 caliber handgun, and $3,250 in cash (including three $50 marked bills from the 29.6 grams buy) were found in her handbag.

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, a large amount of cash, weapons, or other indicia of narcotics distribution. Furthermore, the overt action of actually selling a quantity of cocaine, whatever the amount, goes well beyond mere possession of a small amount.

The arrest, in conjunction with the above charges, the circumstances surrounding the arrest, the fact that the controlled substance and a weapon (loaded firearm) were found in the possession of the applicant, and that she was actually selling a quantity of cocaine, are sufficient factors to establish that the applicant is an alien for whom there is reason to believe is or has been an illicit trafficker in a controlled substance, even though the record in this matter indicates that the applicant was not convicted of the trafficking charges. *See Matter of Rico, supra.*

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.