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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: MAY 26 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 (CAA) of November 2, 1966. The CAA provides, in part:

> [T]he 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, may be adjusted by the Attorney General, (now the Secretary of Homeland Security, (Secretary)), in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and 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 he falls within the purview of sections 212(a)(2(A)(i)(I), 212(a)(2)(A)(i)(II), 212(a)(2)(B) and 212(a)(2)(C) of the Immigration and Nationality Act (the Act). The Acting District Director concluded that the applicant is not eligible for any relief or benefit from this application and denied the application accordingly. *See Acting District Director Decision* dated June 10, 2003.

Section 212(a)(2) of the Act states in pertinent part, that:

> (A) Conviction of certain crimes.-
>
> > (i) In general.-Except as provided in clause (ii), 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)), is inadmissible.
>
> (B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

Section 212(a)(2)(C) of the Act states in pertinent part, that:

> (C) Controlled substance traffickers.-
>
> any alien who the consular officer or the Attorney General knows or has reasons to believe-

> (i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so.....is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

> (h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D) and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relate to a single offense of simple possession of 30 grams of less of marijuana.-
>
> . . . .
>
> (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

The record reflects that the applicant has the following convictions:

> November 10, 1972: Westchester County Court in New York convicted for the offenses of Grand larceny 2nd Degree and Criminal Mischief 4th Degree.
>
> January 15, 1976: Circuit Court in and for Dade County, Florida for the offense of Robbery.
>
> January 15, 1976: Circuit Court in and for Dade County, Florida for the offenses of Robbery and False Imprisonment and was sentenced to ten years imprisonment
>
> June 2, 1989: United States District Court for the Southern District of Florida of the offenses of Conspiracy to Possess with Intent to distribute Cocaine and Possession with intent to Distribute Cocaine and was sentenced to five years imprisonment.

The applicant is inadmissible to the United States due to his multiple convictions of crimes involving moral turpitude, his conviction for possession of a controlled substance and due to reasonable grounds to believe that he was involved in the trafficking of a controlled substance.

On appeal counsel asserts that the applicant was never arrested for Conspiracy with Intent to Distribute Cocaine and that he was never convicted on this charge. No additional documentation was provided to substantiate his assertion. Counsel states that the person convicted is listed as Rolando Ramon Alvarez and not Rolando Alvarez, the name of the applicant. Counsel's assertion is not persuasive since the fingerprint results provided by the Federal Bureau of Investigations (FBI) show that the conviction pertains to the applicant.

No waiver of the ground of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act is 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.