



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



Public Copy

FILE: [Redacted]

Office: Miami

Date: AUG 23 2000

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)

IN BEHALF OF APPLICANT: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

Terrance M. O'Reilly, 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 because he falls within the purview of sections 212(a)(2)(A)(i)(I), 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)(I), 1182(a)(2)(A)(i)(II), and 1182(a)(2)(C). 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 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).

(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 applicant was arrested and/or convicted in [REDACTED] of the following:

1. Arrested on June 24, [REDACTED] Case No. [REDACTED] for possession of cocaine, and sale of cocaine. On August 9, [REDACTED] the applicant was adjudged guilty of sale, manufacture, or delivery of cocaine. He was sentenced to imprisonment for a term of 6 months concurrent with sentences imposed in Case No. [REDACTED] (paragraph 2 below), and assessed a total of \$471 in costs.

2. Arrested on October 25, [REDACTED] Case No. [REDACTED] for sale/delivery of controlled substance. On May 19, [REDACTED] the applicant was adjudged guilty of the crime and placed on probation. Because the applicant violated the terms of his probation, the court revoked his probation and sentenced him to imprisonment for a term of 6 months.

3. Arrested on January 28, [REDACTED] Case No. [REDACTED] for battery (simple). On March 18, [REDACTED] the applicant was convicted of the crime and placed on probation for a period of 12 months.

4. Arrested on January 15, [REDACTED] Case No. [REDACTED] for petit larceny/theft. On June 19, [REDACTED] the applicant was convicted of the crime and sentenced to credit for time served.

5. Arrested on April 29, [REDACTED] Case No. [REDACTED] for auto theft, burglary (vehicle), and criminal conspiracy. On April 5, [REDACTED] the applicant was adjudged guilty of Count 1, grand theft motor vehicle, and Count 2, burglary (unoccupied). He was sentenced to imprisonment for a term of 2 days, assessed a total of \$255 in costs, and ordered to make restitution in the amount of \$600.

6. Arrested on December 20, [REDACTED] Case No. [REDACTED] for grand theft auto, burglary of vehicle, criminal mischief, possession of burglary tools, and conspiracy to commit grand theft. On July 19, [REDACTED] the applicant was found guilty of Count 1, burglary of a conveyance; Count 2, possession of burglary tools; and Count 3, criminal mischief. Adjudication of guilt was withheld, and the applicant was placed on probation for a period of 6 months and assessed a total of \$225 in costs.

Theft or larceny, whether grand or petty, is a crime involving moral turpitude (paragraphs 4 and 5 above). Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974); Morasch v. INS, 363 F.2d 30 (9th Cir. 1966); Matter of Chen, 10 I&N Dec. 671 (BIA 1964). Likewise, burglary (with intent to commit theft) is a crime involving moral turpitude (paragraph 5 and 6 above). Matter of M-, 2 I&N Dec. 721 (BIA 1982); Matter of Leyva, 16 I&N Dec. 118 (BIA 1977); Matter of Frentescu, 18 I&N Dec. 244, 245 (BIA 1982). Additionally, criminal mischief is a crime involving moral turpitude (paragraph 6 above).

See Matter of M-, 3 I&N Dec. 272 (BIA 1948) (Malicious Destruction of Property). So is possession of burglary tools if accompanied by an intent to use the tools to commit a turpitudinous offense (paragraph 6 above). Matter of Serna, 20 I&N Dec. 579 (BIA 1992); Matter of S-, 6 I&N Dec. 769 (BIA 1955).

The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on his convictions of crimes involving moral turpitude.

The applicant is also inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act based on his convictions of possession and sale (trafficking) of controlled substances (paragraphs 1 and 2 above). There is no waiver available to an alien found inadmissible under this section except for a single offense of simple possession of 30 grams or less of marijuana. The applicant does not qualify under this exception.

In view of the foregoing, the applicant is ineligible for adjustment of status to permanent resident 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.