

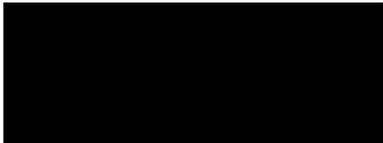


U.S. Department of Justice

Immigration and Naturalization Service

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



Identifying documents
prevent clearly unwarranted
invasion of personal privacy

FILE:

Office: Miami

Date: JAN 31 2000

IN RE: Applicant:

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

Public Copy

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

For 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)(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 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 following:

1. On March 21, 1997, in the Circuit Court of the State of Florida, Collier County, Case No. [REDACTED], the applicant was arrested and charged with Count 1, possession of controlled substance, cocaine; Count 2, possession with intent to sell/deliver a controlled substance; and Count 3, possession of controlled substance. On May 19, 1997, the applicant was adjudged guilty of Count 1 and he was placed on probation for a period of 18 months and assessed a total of \$453 in costs. A "no information" was entered on Counts 2 and 3.

2. On June 2, 1992, in the Circuit Court of the State of Florida, Collier County, Case No. [REDACTED], the applicant entered a plea of guilty to Count 1, resisting arrest with violence; and Count 2, resisting/obstructing officer without violence. The applicant was adjudged guilty as to both counts and he was placed on probation for a period of one year, to run concurrent with Case No. [REDACTED] (paragraph 3 below).

3. On March 24, 1992, in the Circuit Court of the Twentieth Judicial Circuit, Collier County, Florida, Case No. [REDACTED], the applicant was indicted for sale/delivery of a controlled substance. On June 2, 1992, the applicant was adjudged guilty of the crime and he was placed on 2 years of community control followed by a period of one year of probation, concurrent with sentence imposed in Case No. [REDACTED] (paragraph 2 above).

4. On March 30, 1988, in the County Court, County of Collier, Florida, the applicant was indicted for Count 1, possession of controlled substance; and Count 2, possession of controlled substance paraphernalia. On April 5, 1988, the applicant entered a plea of guilty to both Counts 1 and 2 and he was placed on probation for a period of 6 months and assessed \$937.50 in fine and costs. Because the applicant violated the terms of his probation, on January 9, 1989, he was sentenced to imprisonment for a term of 60 days.

Pursuant to Florida Statute section 843.01, whoever knowingly and willfully resists, obstructs, or opposes any officer..., or any person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, by offering or doing violence to the person of such officer or legally authorized person, is guilty of a felony of the third degree, punishable by a term of imprisonment not exceeding 5 years.

The crimes of interfering with a law enforcement officer and resisting an officer with violence are analogous to assault. Matter of Logan, 17 I&N Dec. 367 (BIA 1980) (The respondent pulled a knife on a law enforcement officer engaged in the performance of his official duties). Matter of Danesh, 19 I&N Dec. 669 (BIA

1988), modified Matter of B-, 5 I&N 538 (BIA 1953), and held that an assault against a peace officer, which results in bodily harm to the victim and which involves knowledge by the offender of the assaulted person's status as a peace officer who is performing an official duty, constitutes a crime involving moral turpitude.

The applicant in paragraph 2 above was convicted of the charge of resisting an officer with violence. While the indictment record in this case shows that the applicant did knowingly and willfully resist, obstruct or oppose a peace officer by offering or doing violence to the officer, the record fails to show such action resulted in bodily harm to the victim. Further, although the applicant's conviction was classified as a third degree felony, the record does not establish that the crime of resisting arrest with violence in this case is a crime involving moral turpitude pursuant to section 212(a)(2)(A)(i)(I) of the Act.

The applicant, however, is 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 or delivery (trafficking) of a controlled substance (paragraphs 1, 3, and 4 above). There is no waiver available to an alien found inadmissible under these sections except for a single offense of simple possession of 30 grams or less of marijuana. The applicant does not qualify under this exception.

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.