

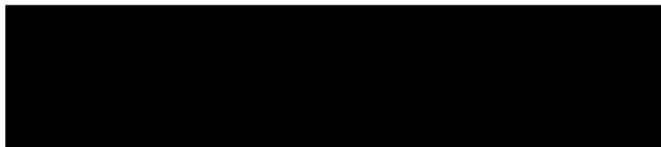


U.S. Department of Justice

Immigration and Naturalization Service



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



FILE: [redacted]

Public Copy
Office: [redacted] Date: [redacted]

MAR 22 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 in part. The application will remain denied.

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 following:

1. On May 9, 1989, in the Circuit Court of the Eleventh Judicial Circuit, [REDACTED] Case No. [REDACTED] the applicant was indicted for possession of cocaine. On July 17, 1989, the applicant entered a plea of guilty and the court found him guilty of the charge, adjudication of guilt was withheld, and he was sentenced to 2 days credit for time served and assessed \$225 court costs.

2. On October 25, 1989, in the Circuit Court of the Eleventh Judicial Circuit, [REDACTED] the applicant was indicted for Count 1, use or possession of drug paraphernalia, and Count 2, possession of cocaine. On October 26, 1989, the applicant entered a plea of nolo contendere to both Counts 1 and 2, the court found him guilty of both counts, adjudication of guilt was withheld, and he was sentenced to one day credit for time served.

3. On July 13, 1994, in the Circuit Court of the Eleventh Judicial Circuit, [REDACTED] the applicant was indicted for possession of cocaine. He was subsequently found guilty of the charge and placed on probation. Because he violated the terms of his probation, the court revoked the probation and on November 18, 1998, the applicant was adjudged guilty of the crime and sentenced to imprisonment for a term of 2 years, and assessed a total of \$468 in fine and costs.

4. On June 2, 1995, in the Circuit Court of the Eleventh Judicial Circuit, [REDACTED] Case No. [REDACTED] the applicant, in a 5-count indictment, was charged with Count 4, possession of cocaine, and Count 5, use or possession of drug paraphernalia. On July 14, 1995, the applicant was adjudged guilty of both Counts 4 and 5 and sentenced to imprisonment for a term of 364 days with "TASC Program" to run concurrently as to each count, and also concurrent with the sentences imposed in Case No. [REDACTED]. This case, however, is not contained in the record of proceeding.

5. On May 30, 1997, in the Circuit Court of the Eleventh Judicial Circuit, [REDACTED] Case No. [REDACTED] the applicant was indicted for aggravated battery/deadly weapon. He was subsequently found guilty of the charge and placed on probation. Because he violated the terms of his probation, the court revoked his probation and on November 18, 1998, the applicant was adjudged guilty of the crime and sentenced to imprisonment for a term of 2 years, concurrent with sentences imposed in Case No.

██████████ (paragraph 3 above), and assessed a total of \$468 in fine and costs.

Aggravated battery (for causing great bodily harm or use of a deadly weapon) is a crime involving moral turpitude (paragraph 5 above). Guillen-Garcia v. INS, 999 F.2d 199 (7th Cir. 1993); Matter of Goodalle, 12 I&N Dec. 106 (BIA 1967); Matter of Baker, 15 I&N Dec. 50 (BIA 1974). The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on his conviction of a crime involving moral turpitude.

The applicant is also inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on his convictions of possession of cocaine and drug paraphernalia. 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.

While the district director determined that the applicant was inadmissible under section 212(a)(2)(C) of the Act, there is no evidence in the record that the applicant is a drug trafficker, or that there is reason to believe that he is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance. Therefore, this finding of the director will be withdrawn.

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 will be affirmed as it relates to the applicant's inadmissibility under sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(i)(II) of the Act. The application will remain denied.

ORDER: The district director's decision is affirmed in part as it relates to the applicant's inadmissibility under sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(i)(II). The application is denied.