

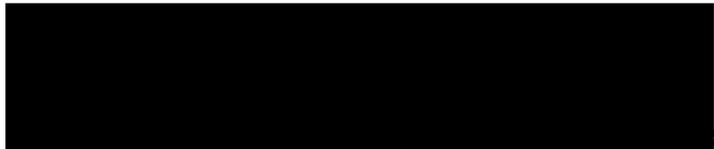


U.S. Department of Justice

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: MAR 31 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 section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I). 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

The record reflects that on September 15, 1999, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was indicted for Counts 1 and 2, sexual battery-deadly weapon or force; Count 3, burglary with assault therein; and Count 4, kidnapping. On September 23, 1999, the applicant was adjudged guilty of Counts 1 and 2, burglary, a lesser included offense; Count 3, burglary of a dwelling with assault and/or battery therein; and Count 4, kidnapping. The applicant was sentenced to imprisonment for a term of 364 days as to Counts 1 and 2, and sentenced to imprisonment for a term of 131 months as to Counts 3 and 4, and assessed a total of \$521 in fine and costs.

Burglary is a crime involving moral turpitude where the object of the unlawful entry or presence is to commit a crime involving moral turpitude. DeBernardo v. Rogers, 254 F.2d 81 (D.C. Cir. 1958); Matter of M-, 2 I&N Dec. 721 (BIA 1946); Matter of Leyva, 16 I&N Dec. 118 (BIA 1977); Matter of Frentescu, 18 I&N Dec. 244, 245 (BIA 1982). In most instances, mere or simple assault or battery does not involve moral turpitude. See Matter Beato, 10 I&N Dec. 730 (BIA 1964); Matter of Z-, 7 I&N Dec. 253 (BIA 1956). The indictment report in the instant case shows that the applicant did unlawfully enter or remain in a dwelling without the consent of the owner or custodian, having an intent to commit sexual battery and/or assault and/or battery by striking her and/or threatening her and/or committing sexual battery on her. Thus, burglary and assault and battery, in this case, are crimes involving moral turpitude. Likewise, kidnapping is a crime involving moral turpitude. Matter of C-M-, 9 I&N Dec. 487 (BIA 1961); Matter of Nakoi, 14 I&N Dec. 208 (BIA 1972).

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 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.