



U.S. Department of Justice  
Immigration and Naturalization Service

AZ

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



FILE: [Redacted]

Office: Miami

Date:

MAR - 7 2001

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

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

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**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.

In response to the notice of certification, the applicant requests reconsideration because he has since put his life in order to become a good citizen of this country, and he has paid all his dues to society and to the courts.

Section 212(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2), 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 the following:

1. On May 21, 1984, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED], the applicant was indicted for Count 1, burglary of structure, and Count 2, possession of burglary tools. On April 23, 1985, the applicant was convicted of the charges, adjudication of guilt was withheld, was placed on probation for a period of 12 months, and ordered to make restitution in the amount of \$125.

2. On February 16, 1989, in Coral Gables, Florida, the applicant was arrested and charged with burglary of structure (theft from construction site). On April 3, 1989, in the County Court, Dade County, Florida, Case No. [REDACTED] the applicant entered a plea of guilty to the reduced charge of petit theft. He was adjudged guilty of petit theft and was ordered to perform 70 hours of community service work and fined \$250 and \$50 in court costs.

3. On March 1, 1992, in Mesa, Arizona, Case No. [REDACTED] the applicant was arrested and charged with burglary 2nd degree-residential structure, aggravated assault on a peace officer, and resisting arrest. The court's final disposition of this arrest is not reflected in the record.

4. The record contains an order of discharge from probation dated September 7, 1995, issued to the applicant relating to a conviction in the Superior Court of Arizona, Maricopa County, under Case No. [REDACTED] for criminal trespass in the first degree. Neither the charging document nor the conviction record is contained in the record of proceeding. It appears that this case may be related to paragraph 3 above.

Burglary (with intent to commit theft) is a crime involving moral turpitude (paragraph 1 above). See 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). The indictment report shows the applicant did unlawfully enter or remain in a certain structure without the consent of the owner or custodian, having an intent to commit theft. Likewise, possession of burglary tools is a crime involving moral turpitude if accompanied by an intent to use the tools to commit a turpitudinous offense such as larceny. Matter of Serna, 20 I&N Dec. 579 (BIA 1992); Matter of S, 6 I&N Dec. 769 (BIA 1955). Count 2 of paragraph 1 above shows the applicant did unlawfully possess a crowbar with intent to use, or allow to be used to commit a burglary. Therefore, burglary and possession of burglary tools, in this case, are crimes involving moral turpitude. Additionally, theft or larceny, whether grand or petty, is a crime involving moral turpitude (paragraph 2 above). Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974); Morasch v. INS, 363 F.2d 30 (9th Cir. 1966).

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 not the recipient of an approved waiver of such grounds of inadmissibility, nor did the applicant file an application for waiver (Form I-601) as had been requested by the district director on October 25, 1999.

The applicant is ineligible for adjustment of status to permanent residence 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.