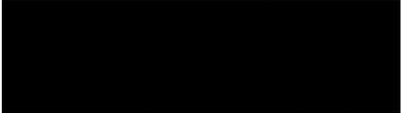




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U.S. Department of Justice
Immigration and Naturalization Service

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



Public Copy

MAR - 8 2001

FILE:

Office: Miami

Date:

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

Identification 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

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)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(II). 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 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

(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).

The record reflects the following:

1. On December 13, 1985, in the Circuit Court of Monroe County, Florida, Case No. [REDACTED], the applicant entered a plea of guilty to possession of cocaine. He was found guilty of the crime, adjudication of guilt was withheld, and the applicant was placed on probation for a period of 18 months.

2. On December 12, 1984, in Monroe County, Florida, Case No. [REDACTED] the applicant was arrested and charged with retail theft. On January 9, 1985, he was adjudged guilty of the crime and placed on probation for a period of 12 months; 24 hours "FSW;" and ordered to pay a fine of \$100 and \$38 in court costs. The record reflects that the applicant violated the terms of his probation, and on July 3, 1986, his probation was terminated unsuccessfully and he was ordered to pay \$40 "C. of S."

3. On February 4, 1992, in the County Court of the Sixteenth Judicial Circuit, Monroe County, Florida, Case No. [REDACTED] the applicant entered a plea of guilty to violation of section 893.0 "CIP" and he was placed on probation for a period of 6 months. While it is not clear in the court record the specific charges against the applicant, section 893 of the Florida statute pertains to drug abuse prevention and control.

4. On March 3, 1987, in Monroe County, Florida, Case No. [REDACTED] the applicant was arrested and charged with Count 1, disorderly conduct; Count 2, resisting arrest with violence; and Count 3, assault on a police officer. On April 8, 1987, the applicant entered a plea of guilty to Count 2, and he was ordered to pay a fine of \$100 and \$90 in court costs. A "no action" was entered as to Counts 1 and 3.

5. On April 11, 1989, in the County Court of Monroe County, Florida, the applicant entered a plea of guilty to Count 1, driving while license suspended, and Count 2, false information. He was adjudged guilty of both counts and sentenced to imprisonment for a period of 25 days as to Counts 1 and 2 concurrently, and ordered to pay a fine of \$100 and \$80 in court costs.

6. On February 23, 1984, in Jacksonville, Florida, Case No. [REDACTED] the applicant was arrested and charged with the felony offense of "body attachment." The court's final disposition of this case, however, is not contained in the record.

7. The Federal Bureau of Investigation report, contained in the record of proceeding, reflects that on August 17, 1983, the applicant was arrested and charged with "neglect-child-without support." A conviction of this crime may render the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. The arrest report and the court's final disposition, however, are not contained in the record.

The crimes of interfering with a law enforcement officer and resisting an officer with violence are analogous to assault (paragraph 4 above). Matter of Logan, 17 I&N Dec. 367 (BIA 1980). Further, 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 arresting officer's report (paragraph 4 above) shows that he was dispatched to a residence in reference to a domestic dispute in progress in which the applicant was throwing furniture and was violently arguing with his wife. As the officer approached, the applicant continued to yell and scream obscenities, would not stop yelling, and the applicant stated to the officer, "Back the fuck up, it's none of your business," as he raised his hands to the officer in a threatening manner. As back-up arrived, the applicant was still violently continuing to yell obscenities, and when the officer told him he was under arrest for disorderly conduct and assault on a police officer and he attempted to handcuff the applicant, the applicant began swinging his arms wildly and he continued to yell and scream at the officers. After physically struggling with the applicant, handcuffs were finally placed on him. It took three officers to handcuff the applicant, and he continued to yell and scream. The arresting officer stated that he was in fear of bodily harm during his initial encounter with the applicant.

The applicant was subsequently convicted of the charge of resisting arrest with violence. While the record in this case shows that the applicant had knowledge that he was resisting a peace officer who was discharging an official duty, it failed to show such action resulted in bodily harm to the victim. The record, therefore, does not establish that the crime of resisting an officer with violence in this case is a crime involving moral turpitude.

However, 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 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 conviction of possession of cocaine. There is no waiver available to an alien found inadmissible under these sections except for a single offense of simple possession of thirty grams or less of marijuana. The applicant does not qualify under this exception.

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.