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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

[REDACTED]

FILE: [REDACTED]

Office: Miami

Date: 17 JAN 2002

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: [REDACTED]

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

Robert P. Wiemann
Robert P. Wiemann, 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 The district director's decision will be withdrawn, and the application will be approved.

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, counsel asserts that he has only recently been retained to continue with the representation of the applicant, and he needs additional time in which to analyze the case, conduct research, and thereafter prepare and submit the required brief or statement in this matter. However, it has been approximately seven months since the request for extension and neither a brief nor additional evidence has been received.

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 the following:

1. On October 9, 1997, in the Circuit Court of the Ninth Judicial Circuit, Orange County, Florida, Case No. [REDACTED] the applicant entered a plea of nolo contendere to obtaining property by worthless check, in violation of Florida statute 832.05(4)(A), a felony. The applicant was found guilty of the crime, adjudication of guilt was withheld, he was placed on

probation for a period of one year, assessed \$250 in fines and costs, and ordered to pay \$228.38 in restitution.

2. On June 15, 1995, in Hampton, Virginia, Case No. [REDACTED] the applicant was arrested and charged with Count 1, attempt to abduct; and Count 2, sexual battery. On November 22, 1995, the court ordered a nolle prosequi on the case.

Obtaining property by worthless check does not involve moral turpitude if a conviction can be obtained without proof that the convicted person acted with intent to defraud (paragraph 1 above). Matter of Zangwill, 18 I&N Dec. 22 (BIA 1981). Florida Statute Ann. section 832.05 does not expressly require intent to defraud as an element of the crime; the statute speaks only of the "knowing" issuance of worthless checks. The Board held in Matter of Zangwill that under Florida law, knowledge of insufficient funds is an element of the crime of issuing worthless checks, but intent to defraud is not an essential element of the crime, and that moral turpitude is not involved if a conviction can be obtained without prior proof that the convicted person acted with intent to defraud.

The applicant is, therefore, not inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, he is eligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966, and he warrants a favorable exercise of discretion. The district director did not find the applicant ineligible under any other provisions of the Act.

ORDER: The director's decision is withdrawn. The application is approved.