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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*

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FILE: [redacted] Office: Miami Date: JAN 18 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: Self-represented

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

Helen E. Crawford for
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 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 she 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, 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).
>
> (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 June 23, 1995, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [redacted] the applicant was indicted for aggravated stalking. On September 26, 1995, the applicant was found guilty of the crime, adjudication of guilt was withheld, she was placed on probation for a period of one year, and assessed $255 in fines and costs.

2. On June 2, 1985, in Dade County, Florida, Case No. [redacted] the applicant was arrested for Count 1, child neglect; Count 2, criminal mischief; and Count 3, trespass after warning. On June 3, 1985, the applicant was found guilty as to Count 2, and she was ordered to pay a fine. A "nolle prosequi" was entered as to Count 1; the final disposition as to Count 3 is not reflected in the record.

3. On August 10, 1988, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [redacted] the applicant was indicted for Count 1, possession of a controlled substance (cocaine); and Count 2, sale, purchase or delivery of a controlled substance. On August 28, 1988, the applicant was found guilty of both Counts 1 and 2, adjudication of guilt was withheld, and she was placed on probation for a period of one year.

Aggravated stalking is a crime involving moral turpitude (paragraph 1 above). Matter of Ajami, I.D. 3405 (BIA 1999). Likewise, criminal mischief, as defined in Florida Statute 806.13 ("..willfully and maliciously injures or damages by any means any real or personal property belonging to another.."), is a crime involving moral turpitude (paragraph 2 above). See Matter of M-, 3 I&N Dec. 272 (BIA 1948).

The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on her convictions of crimes 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 her conviction of possession of cocaine. Additionally, the applicant is inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act based on her conviction of sale, purchase or delivery (trafficking) of cocaine (paragraph 3 above). 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.