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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

02 JUL 2002

FILE: [redacted] Office: Miami Date:

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 he falls within the purview of sections 212(a)(2)(A)(i)(I) and 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I) and 1182(a)(2)(B). 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....
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> * * *
>
> (B) Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

The record reflects numerous arrests and/or convictions relating to the applicant and are listed by the district director in his

decision. Therefore, this list will not be repeated here. Only those convictions which may render the applicant inadmissible to the United States are addressed below:

1. On May 13, 1987, in the Fifteenth Judicial Circuit, Palm Beach County, Florida, Case No. 87-4480-CF A02, the applicant was indicted for fraudulently obtaining a drivers license. On September 7, 1990, the applicant was convicted of the crime and sentenced to credit for time served.

2. On October 22, 1984, in the Superior Court, Telfair County, Georgia, Case No. 7339, the applicant was convicted of burglary (with intent to commit theft). He was sentenced to imprisonment for a term of 7 years.

3. On March 22, 1983, in the Fifteenth Judicial Circuit, Palm Beach County, Florida, Case No. 83-1446-CF, the applicant was indicted for sexual battery. On May 12, 1983, the applicant was convicted of battery, a lesser included offense. Imposition of sentence was withheld and the applicant was placed on probation for a period of one year, to make restitution to the victim's medical bills, and no contact with the victim during probation.

4. On March 26, 1981, in the County/Circuit Court, Palm Beach County, Florida, the applicant was convicted of carrying a pistol without first obtaining a license. He was sentenced to imprisonment for a period of 10 months.

Any crime involving fraud is a crime involving moral turpitude. Burr v. INS, 350 F.2d 87, 91 (9th Cir. 1965), cert. denied, 383 U.S. 915 (1966). The court record reflects that the applicant knowingly made a false statement or knowingly concealed a material fact or otherwise committed a fraud in an application for the purpose and intent of obtaining a drivers license (paragraph 1 above). Likewise, burglary (with intent to commit theft) is a crime involving moral turpitude (paragraph 2 above). See Matter of R-, 1 I&N Dec. 540 (BIA 1943); 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).

In most instances, mere simple assault or battery does not involve moral turpitude (see paragraph 3 above). Matter of Danesh, 19 I&N Dec. 669 (BIA 1988); Ciambelli ex rel. Maranci v. Johnson, 12 F.2d 465 (D. Mass. 1926). The incident report in this case shows that the applicant dragged the victim by the hair into the back of his vehicle (van), he struck the victim on the right side of the face when she started screaming and crying, and he had forcible intercourse with the victim. The victim, who was 2-months pregnant, suffered heavy vaginal bleeding and a bruise on the right cheek bone. Consequently, the crime of battery in this case was

more serious than simple battery and, therefore, constitutes a crime involving moral turpitude.

The applicant is 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 also inadmissible to the United States pursuant to section 212(a)(2)(B) of the Act based on his convictions of 2 or more offenses for which the aggregate sentences to confinement actually imposed were 5 years or more.

The applicant was offered an opportunity to submit evidence in opposition to the district director's findings. No additional evidence has been entered into the record of proceeding. Further, the applicant is not the recipient of an approved waiver of such grounds of inadmissibility, nor is there evidence in the record that he is eligible to file for such a waiver.

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.