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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]

FILE: [redacted] Office: Miami Date: MAY 30 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

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, 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 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 --
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> (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 5, 1991, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, [redacted] the applicant was indicted for Count 1, burglary of conveyance; Count 2, kidnapping; Count 3, aggravated battery; Count 4, aggravated battery; and Count 5, aggravated battery. On July 13, 1992, the

 [redacted]

applicant was adjudged guilty of all 5 counts, he was sentenced to imprisonment for a term of 364 days followed by 7 years of probation, and ordered to pay the sum of $255 in fines and costs. Because the applicant violated the terms of his probation, on April 29, 1997, the applicant's probation was revoked and he was sentenced to imprisonment for a term of 5 years.

2. On October 24, 1991, in Dade County, Florida, Case No. M91-82009, the applicant was arrested and charged with possession of marijuana. On October 30, 1991, the applicant was convicted of the crime and ordered to pay an unspecified amount in fines and costs.

3. On November 22, 1988, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, [redacted] the applicant was indicted for Count 1, possession of a controlled substance (cocaine); and Count 2, disorderly intoxication. On March 13, 1989, the applicant was found guilty of both Counts 1 and 2, and he was sentenced to 2 days credit for time served and imposed $225 in court costs.

4. On February 1, 1988, in Dade County, Florida, Case No. 88-3419, the applicant was arrested and charged with Count 1, possession of a controlled substance (cocaine); and Count 2, sale of a controlled substance (cocaine). The court's final disposition of this arrest is not contained in the record of proceeding.

5. On November 15, 1984, in the Circuit Court of the Thirteenth Judicial Circuit, Hillsborough Florida, [redacted] the applicant entered a plea of guilty to attempted robbery. The applicant was adjudged guilty of the crime and he was sentenced to imprisonment for a term of 30 months.

Burglary is a crime involving moral turpitude where the object of the unlawful entry or presence is to commit a crime involving moral turpitude (paragraph 1 above). DeBernardo v. Rogers, 254 F.2d 81 (D.C. Cir. 1958); see also Matter of M-, 2 I&N Dec. 721 (BIA 1946). The indictment report in the instant case shows that the applicant did unlawfully enter or remain in an automobile being occupied by the owner without the consent of the owner having an intent to commit kidnapping and made an assault or battery with a knife upon the owner. Kidnapping is a crime involving moral turpitude. Matter of C-M-, 9 I&N Dec. 487 (BIA 1961); Matter of Nakoi, 14 I&N Dec. 208 (BIA 1972). Aggravated battery (with a deadly weapon-knife) is also a crime involving moral turpitude. See United States ex rel. Morlacci v. Smith, 8 F.2d 663 (W.D. N.Y. 1925); Matter of Goodalle, 12 I&N Dec. 106 (BIA 1967); Matter of Baker, 15 I&N Dec. 50 (BIA 1974). Likewise, attempted robbery is also a crime involving moral turpitude (paragraph 5 above). Matter of Martin, 18 I&N Dec. 226 (BIA 1982); Matter of Romandia-Herreros,

11 I&N Dec. 772 (BIA 1966); Matter of Carballo, 19 I&N Dec. 357 (BIA 1986).

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 also inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on his convictions of possession of cocaine and possession of marijuana (paragraphs 2 and 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.