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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



FILE:



Office: Miami

Date:

FEB 28 2003

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

**PUBLIC COPY**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office for review. The acting 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)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I). The acting district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

In response to the notice of certification, the applicant requests reconsideration because he provides 80% of the total family income, and that although his wife works as well, she does not make enough money to support their four children and herself without his help. The applicant states that he knows he had committed mistakes in the past, but he has changed, thanks to his family. He further states that he can explain what appears in his records because he is not guilty.

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....

The record reflects that on May 12, 2000, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. 00-9193, the applicant was convicted of escape, resisting an officer with violence, resisting an officer without violence, and criminal mischief. Adjudication of guilt was withheld, and he was placed on probation for a period of one year, with special condition that he makes restitution to the victim in the amount of \$110.08, pay the

sum of \$468.00 in fines and costs, complete the Anger Control Program, and complete 150 hours of community service.

Criminal mischief is a crime involving moral turpitude. See Matter of M-, 3 I&N Dec. 272 (BIA 1948) (malicious destruction of property). Resisting an officer with violence is analogous to assault and is, therefore, a crime involving moral turpitude. Matter of Logan, 17 I&N Dec. 367 (BIA 1980); Matter of Danesh, 19 I&N Dec. 669 (BIA 1988).

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. While the applicant states that he can explain what appears in his records because he is not guilty, the court record clearly shows that the applicant was convicted of the crimes. The Service is required to rely on the court record as it stands, and cannot make determinations of guilt or innocence based on that record. Further, the application for waiver of grounds of inadmissibility, filed by the applicant on February 18, 1999, was denied by the acting district director on March 5, 2002. The applicant appealed this decision to the Associate Commissioner, and on October 3, 2002, the Associate Commissioner dismissed the appeal.

The applicant is, therefore, ineligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966. The decision of the acting district director to deny the application will be affirmed.

**ORDER:** The acting district director's decision is affirmed.