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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



Public Copy

FILE: [Redacted]

Office: Miami

Date: MAR 15 2001

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

Identification data deleted to
prevent clearly unwarranted
invasion of personal privacy.

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, Acting 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 determined that the applicant failed to submit additional evidence as had been requested. The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

It is noted that the district director, in his decision, determined that based on the applicant's failure to submit evidence as had been requested, the application will, therefore, be denied for lack of prosecution, and that his decision will not be certified to the Administrative Appeals Office (AAO) pursuant to Service Operating Instruction 245.5(b). However, on May 30, 2000, the district director certified his decision to the AAO and accorded the applicant 30 days in which to submit a brief or other written statement for consideration. The applicant, however, has provided no statement or additional evidence on notice of certification.

Section 212(a)(2) of the Immigration and Nationality Act (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).

The applicant was requested to appear for a scheduled interview before an officer of the Service on April 15, 1993, and to bring

with him, among other documents, all records relating to his arrests and his medical examination report. The record reflects that the medical examination report and records of his arrests are contained in the record of proceeding.

A review of the records of the applicant's arrests and/or convictions reflect the following:

1. On December 15, 1984, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with Count 1, driving under the influence; Count 2, possession of cocaine; and Count 3, introduction of unlawful contraband into prison. On January 13, 1995, a "no information" was entered on the case.

2. On April 18, 1988, in Dade County, Florida, the applicant was arrested and charged with Count 1, driving under the influence; Count 2, battery on a police officer; Count 3, resisting arrest with violence; and Count 4, driving while license suspended. On May 4, 1988, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED], the applicant was indicted for Count 1, battery on a law enforcement officer; and Count 2, battery on a law enforcement officer. On November 2, 1988, the applicant was found guilty as to both Counts 1 and 2, adjudication of guilt was withheld, he was placed on probation for a period of 18 months, and assessed \$225 in costs.

3. On September 23, 1989, in Dade County, Florida, the applicant was arrested and charged with Count 1, assault and battery, and Count 2, unlawful use of a driver's license. The records of the Circuit and County Court of the Eleventh Judicial Circuit, under Case No. [REDACTED], reflect that these charges were subsequently dismissed.

Battery on a police officer is a crime of moral turpitude when it involves (1) bodily harm to the victim, (2) knowledge that the victim is an officer, and (3) is performing an official duty. See Matter of Danesh, 19 I&N Dec. 669, (BIA 1988). Further, the crimes of interfering with a law enforcement officer and resisting an officer with violence are analogous to assault. Matter of Logan, 17 I&N Dec. 367 (BIA 1980).

Pursuant to Florida Statute Section 784.03, a person commits battery if he (a) actually and intentionally touches or strikes another person against the will of the other; or (b) intentionally causes bodily harm to another person. While violation of this section is classified a misdemeanor of the first degree, section 784.07 of the Florida Statute requires that whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer while the officer is engaged in the lawful performance of his duties, it shall therefore be reclassified from a misdemeanor of the first degree to a felony of the third degree.

The arrest report (paragraph 2 above) shows that the applicant was stopped for a traffic violation, he was subsequently offered and he agreed to a DUI roadside test. Upon the conclusion of the test, he was advised that he would be transported to the Dade County jail. The applicant became belligerent and stated, "All you cops are assholes," then stood up from his seated position. The applicant was advised by the officer to be seated, and when he refused, he was told by the officer that he would have to be handcuffed. When the applicant was asked to place his hands behind his back, he stated to the officer, "make me," and then used his left hand and struck the officer on the right side of the face. The applicant again struck the officer with an open hand on the right side of the face.

The record reflects that the applicant caused bodily harm to the victim, he had knowledge that the victim is an officer, and that the officer was performing an official duty. Thus, the crime of battery on a police officer in this case is a crime involving moral turpitude.

The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. 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.

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.