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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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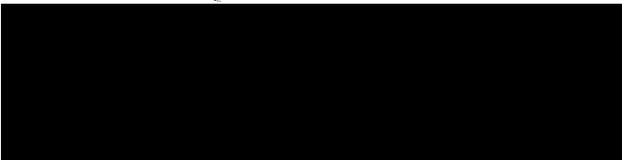


FILE:

Office: Miami

Date: **AUG 23 2002**

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.

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)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I). The 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 asserts that he was punished and have completed his debt with justice for any offense which he had been convicted, and that it has been more than 10 years since his conviction and he has no other arrest record. The applicant submits affidavits from friends attesting to his good moral character. He also submits a self-affidavit explaining the incident leading to his arrest and conviction in January 1991.

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 the following:

1. On January 14, 1991, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case [REDACTED] the applicant was indicted for Count 1, aggravated battery, and Count 2, battery on a law enforcement officer. On April 4, 1991, the applicant was found guilty as to both Counts 1 and 2. Adjudication

of guilt was withheld and he was placed on probation for a period of one year with special condition that he receive treatment at the Douglas Gardens Community Mental Health Center and serve 24 hours of community service, and required to pay \$1200 for civil judgment.

2. On January 18, 1989, in Los Angeles, California, the applicant was arrested and charged with violation of 647(a) PC, disorderly conduct: solicit lewd act. The court's final disposition of this arrest is not reflected in the record.

3. On November 20, 1989, in Van Nuys, California, the applicant was arrested and charged with violation of 647(a) PC, disorderly conduct: solicit lewd act. The applicant was subsequently convicted of the crime and sentenced to 12 months of probation and 5 days in jail.

Aggravated battery is a crime involving moral turpitude. Matter of P-, 7 I&N Dec. 376 (BIA 1956); Matter of Goodalle, 12 I&N Dec. 106 (BIA 1967); Matter of Baker, 15 I&N Dec. 50 (BIA 1974). Likewise, battery on a law enforcement officer (which results in bodily harm to the victim and which involves knowledge by the offender that his force is directed to an officer who is performing an official duty, is a crime involving moral turpitude. Matter of Danesh, 19 I&N Dec. 669, (BIA 1988). The arrest report in this case reflects that when the applicant was being transported to jail subsequent to his arrest for aggravated battery, he attempted to kick a police officer in the groin, and the officer was struck on the legs three times. He also threatened all the officers as he banged his head on the jail door. The indictment report also reflects that the applicant did unlawfully, feloniously, and knowingly commit a battery upon law enforcement officers while the officers were then and there engaged in the lawful performance of their duties. Battery on a law enforcement officer in this case is a crime involving moral turpitude. Additionally, lewd and lascivious conduct or behavior is a crime involving moral turpitude (paragraph 3 above). Matter of Alfonso-Bermudez, 12 I&N Dec. 225 (BIA 1967).

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 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, on appeal, denies using any force against the Miami Beach Police who arrested him, but rather, the officers kicked him, leaving boot marks on his chest and back. The Service, however, may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. Pablo v. INS, 72 F.3d 110, 113 (9th Cir. 1995);

Gouveia v. INS, 980 F.2d 814, 817 (1st Cir. 1992); and Matter of Roberts, Int. Dec. 3148 (BIA 1991).

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.