



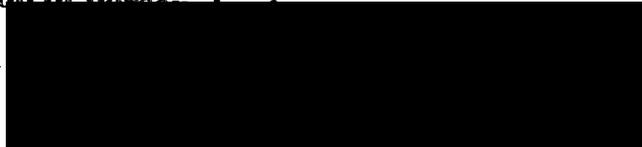
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U.S. Department of Justice

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:

DEC 13 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

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 Associate Commissioner affirmed the decision of the district director to deny the application. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted and the previous decision of the Associate Commissioner 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.

The district director denied the application after determining that the applicant was inadmissible to the United States because she falls within the purview of sections 212(a)(2)(A)(i)(I), 212(a)(2)(A)(i)(II), and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I), 1182(a)(2)(A)(i)(II), and 1182(a)(2)(C).

Upon review of the record of proceeding, the Associate Commissioner determined, on December 22, 1998, that there was no evidence in the record that the applicant was convicted of possession and trafficking in a controlled substance. He, therefore, withdrew the findings of the district director that the applicant was inadmissible pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act. The Associate Commissioner, however, affirmed the district director's finding that the applicant was inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, based on her conviction of burglary (of a dwelling with intent to commit a crime therein while armed with a deadly weapon), a crime involving moral turpitude.

In a motion to reopen, filed with the Service approximately January 21, 1999, the applicant states that it was never demonstrated, nor did the police report contain any evidence that she entered the home of another and actually removed items not belonging to her. The applicant explains that acting upon a maternal instinct, she entered the home of another solely in order to extricate her son who had become involved in a physical altercation with another individual. Unfortunately, while she was attempting to remove her son from a dangerous and violent situation, she too became embroiled in the altercation. The applicant states that she was charged with burglary for simply coming to the aid of her son. She did not enter the residence of another with the intent to steal or to engage in a criminal offense.

The court record clearly shows that the applicant was convicted of the crime of burglary with the intent to commit a crime therein while armed with a deadly weapon. 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. Furthermore, the Service 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, 20 I&N Dec. 294 (BIA 1991).

On motion, the applicant requests that favorable consideration be given to her application for a waiver under section 212(h) of the Act. The application for waiver of grounds of inadmissibility (Form I-601) was forwarded to the Miami Service office for adjudication. On July 30, 2002, the Miami acting district director denied the waiver application because the applicant has no qualifying family relationship required for the filing of a waiver application. No appeal on the denial of the waiver application was filed by the applicant.

The applicant, therefore, remains inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on her conviction of a crime involving moral turpitude. The previous decision of the Associate Commissioner will be affirmed.

ORDER: The decision of the Associate Commissioner dated December 22, 1998, is affirmed.