



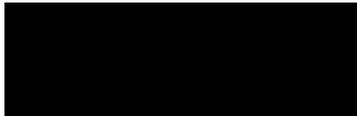
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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [Redacted]

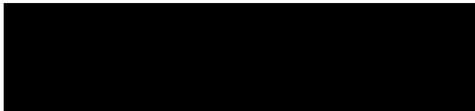
Office: Miami

Date: 04 FEB 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:



PUBLIC COPY

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 sections 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)(II) and 1182(a)(2)(C). 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, counsel requests an extension of 60 days in which to prepare a brief following the production of the applicant's file by the Service pursuant to the pending Freedom of Information Act (FOIA) request. On September 19, 2001, the Service mailed to the applicant's attorney copies of material contained in the applicant's file pursuant to his FOIA request. However, it has now been approximately 5 months and neither a brief nor additional evidence has been received.

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

(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).

(C) Any alien who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

The record of proceeding reflects numerous arrests and/or convictions relating to the applicant and are listed by the district director in his decision. The list will not be repeated here. Only those convictions which render the applicant inadmissible to the United States, as cited above, are listed below:

1. On September 25, 1990, in the Circuit Court of Collier County, Florida, Case No. [REDACTED] the applicant was adjudged guilty of sale or delivery of a controlled substance. He was sentenced to imprisonment for a term of 6 months followed by probation for a period of 3 years.

2. On October 19, 1981, in the State Court, Bulloch County, Georgia, Docket No. [REDACTED] the applicant was convicted of theft by shoplifting. He was sentenced to be confined in labor for a term of 12 months, and ordered to pay a fine of \$150.

3. The Federal Bureau of Investigation report shows that on May 29, 1985, in Statesboro, Georgia, the applicant was arrested and charged with contributing to the delinquency of a minor. On July 15, 1985, the applicant entered a plea of guilty to the crime, he was placed on probation for a period of 12 months, and fined \$250.

Theft or larceny, whether grand or petty, is a crime involving moral turpitude (paragraph 2 above). Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974); Morasch v. INS, 363 F.2d 30 (9th Cir. 1966).

Additionally, contributing to the delinquency of a minor could be a crime involving moral turpitude (paragraph 3 above). Matter of C-, 5 I&N Dec. 65 (BIA 1953). The determination as to whether the offense involves moral turpitude is based on the record of conviction, which includes the complaint, information or indictment. When the record of conviction clearly shows lewd and lascivious acts involved in the commission of the crime, the particular offense involves moral turpitude. The applicant, however, failed to submit the court record in this case; therefore, a determination cannot be made whether this particular offense involves moral turpitude.

The applicant is inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(I) of the Act based on his conviction of a crime involving moral turpitude (paragraph 2 above). The



applicant is also inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act based on his conviction of sale or delivery (trafficking) of a controlled substance. 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.