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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: 15 FEB 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 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)(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). 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 does not agree with the statement made by the Service that he is a drug dealer. He states that he recognizes that he was addicted to drug and alcohol in the past, but that he never in his life had anything to do with the "dealing of drugs," and that he considers himself a victim of these vices.

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 contains numerous arrests and/or convictions relating to the applicant. However, only the crimes which may render the applicant inadmissible to the United States are listed below:

1. On February 27, 2000, in Dade County, Florida, Case No. B00-10062, the applicant was arrested and charged with Count 1, criminal mischief; Count 2, battery; and Count 3, disorderly intoxication. On June 7, 2000, the applicant was found guilty of Counts 1 and 3, execution of sentence was withheld as to Count 1, and he was sentenced to credit for time served as to Count 3. A nolle prosequi was entered as to Count 2.

2. On May 14, 1998, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. 97-41421, the applicant was adjudged guilty of Count 1, resisting an officer with violence; Count 2, criminal mischief; and Count 3, battery. He was sentenced to imprisonment for a term of 364 days, Counts 1 thru 3 concurrent, and ordered to pay the sum of \$448 in fines and costs.

3. On March 25, 1994, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. 94-7386, the applicant was indicted for Count 1, possession of cocaine; and Count 2, sale, purchase, or delivery of cocaine. On July 6, 1994, the applicant was adjudged guilty as to both Counts 1 and 2, he was sentenced to imprisonment for a term of 364 days, concurrently, and ordered to pay the sum of \$255 in fines and costs.

4. On August 8, 1990, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. 90-28714, the applicant was indicted for Count 1, possession of a controlled substance (cocaine); and Count 2, disorderly conduct by drinking in public. On November 8, 1991, the applicant was adjudged guilty as to both Counts 1 and 2, he was sentenced to imprisonment for a term of 364 days, concurrently, and ordered to pay the sum of \$225 in fines and costs.

5. On March 11, 1990, in Dade County, Florida, Case No. 90-9914, the applicant was arrested and charged with Count 1, aggravated assault; and Count 2, attempted armed robbery. The court's final disposition of this case is not contained in the record of proceeding.

6. On February 7, 1989, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. 88-34451, the applicant entered a plea of nolo contendere to sale, purchase, or

delivery of a controlled substance (cocaine). He was found guilty of the crime, imposition of sentence was withheld, and he was placed on probation for a period of 2 years. The record reflects that on March 2, 1990, the applicant was found to have violated the terms of his probation and the special condition of his probation was modified.

7. On November 24, 1986, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. 86-32540, the applicant was indicted for Count 1, loitering or prowling; Count 2, resisting officer with violence to his person; and Count 3, battery on a law enforcement officer. On January 5, 1987, the applicant was adjudged guilty as to all 3 counts. The entry of sentence was suspended as to Count 1, and he was sentenced to imprisonment for a term of 6 months as to Counts 2 and 3, each count to run concurrently with each other.

Criminal mischief, as defined in Florida Statute 806.13 ("..willfully and maliciously injures or damages by any means any real or personal property belonging to another.."), is a crime involving moral turpitude (paragraphs 1 and 2 above). See Matter of M-, 3 I&N Dec. 272 (BIA 1948).

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 (paragraph 7 above). 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 (paragraph 2 above). 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.

Although the arrest report and the indictment report (paragraphs 2 and 7 above) show that the applicant had knowledge that the victims were law enforcement officers who were performing official duties, and that the applicant actually and intentionally touched the officers, the documents failed to show such actions resulted in bodily harm to the victims. Further, although the applicant's convictions were classified as third degree felony, the record does not establish that the crime of resisting an officer with violence

and battery on a law enforcement officer in this case are crimes involving moral turpitude.

The applicant, however, is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on his two convictions of criminal mischief, found to be crimes involving moral turpitude.

The applicant is also inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) of the Act based on his convictions of possession of cocaine (paragraphs 3, and 4 above). Additionally, the applicant is inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act based on his convictions of sale, purchase or delivery (trafficking) of cocaine (paragraphs 3 and 6 above). While the applicant claims that he is not a "drug dealer," the arrest report and indictment report in this case show that the applicant did unlawfully and feloniously purchased (traffic) cocaine from undercover officers.

There is no waiver available to an alien found inadmissible under sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act 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.