



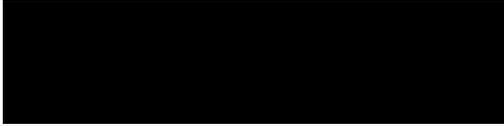
A2

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: 15 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:  
[Redacted]

**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*  
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) and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I) and 1182(a)(2)(C). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

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 reflects the following:

1. On August 26, 1999, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. 99-26831, the applicant was indicted for aggravated battery with a deadly weapon (knife). On October 19, 1999, the applicant entered a plea of guilty to the charge, adjudication of guilt was withheld, he was placed on probation for a period of one year, and ordered to pay the sum of \$468 in fines and costs.

2. On December 28, 1998, in Dade County, Florida, Case No. 98-66475, the applicant was arrested and charged with simple battery. On March 22, 1999, a "nolle pros" was entered on the case.

3. On January 8, 1998, in Dade County, Florida, Case No. 98-774, the applicant was arrested and charged with Count 1, aggravated assault; and Count 2, burglary of occupied dwelling. On January 29, 1998, a "no action" was entered on the case.

4. On January 6, 1998, in Dade County, Florida, Case No. 98-464, the applicant was arrested and charged with sale of cocaine. On January 27, 1998, a "no action" was entered on the case.

Aggravated battery (with a deadly weapon-knife) is a crime involving moral turpitude (paragraph 1 above). See United States ex rel. Morlacci v. Smith, 8 F.2d 663 (W.D. N.Y. 1925); Matter of Goodalle, 12 I&N Dec. 106 (BIA 1967); Matter of Baker, 15 I&N Dec. 50 (BIA 1974). The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on his conviction of a crime involving moral turpitude.

Despite the fact that the applicant was not convicted of sale of cocaine (paragraph 4 above), the district director, citing Matter of Rico, 16 I&N Dec. 181 (BIA 1977), and Matter of Tillighast, 27 F.2d 580 (1st Cir., 1928), determined that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act because he had reason to believe the applicant 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. He based his conclusion on the police report which shows that the undercover officer observed the co-defendant walk up to the applicant and exchanged something with the applicant; when the co-defendant was approached by 2 officers, the co-defendant unclenched his right hand and dropped 2 pieces of crack cocaine; the co-defendant stated that he purchased the crack cocaine for \$5 from the applicant whom he later identified, and whom the officer observed make some type of exchange with the co-defendant.

"Reason to believe" might be established by a conviction, an admission, a long record of arrests with an unexplained failure to prosecute by the local government, or several reliable and corroborative reports. The essence of the standard is that the consular officer or immigration officer must have more than a mere suspicion. There must exist a probability, supported by evidence, that the alien is or has been engaged in trafficking.

None of the criteria listed above is present in this case. The record shows that the applicant had only one arrest relating to a controlled substance, and that he was merely "observed" making an exchange with the co-defendant. Further, while the undercover officer observed the co-defendant walk up to the applicant and "exchanged something" with the applicant, the report does not show that the officer saw what was being exchanged. Although the co-defendant subsequently identified the applicant as the person who sold him the cocaine, it is not clear that the co-defendant was reliable, nor does the police report show that the applicant had any drugs in his possession or that the \$5 bill, claimed by the co-defendant to have given the applicant, was in his possession. The applicant was not indicted for the charge of sale of cocaine but, rather, a "no action" was entered by the court.

Accordingly, the record does not support a finding that there was reason to believe the applicant is or has been an illicit trafficker and he is, therefore, not inadmissible pursuant to section 212(a)(2)(C) of the Act.

The applicant, however, is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on his conviction of a crime involving moral turpitude. 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. Nor is the applicant 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.