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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# [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: 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

*Helen E. Crawford*  
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.

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 October 20, 1999, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with possession of marijuana. On December 30, 1999, the applicant was adjudged guilty of the crime, and he was ordered to pay \$100 in fines and \$261 in court costs.
2. On October 6, 1997, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was indicted for strongarmed robbery. On April 15, 1998, the applicant was adjudged guilty of the crime, and he was sentenced to imprisonment for a term of 180 days.
3. On August 10, 1996, the applicant was arrested and charged with retail theft. On August 11, 1996, the applicant was found guilty of the crime and sentenced to credit for time served.
4. On July 24, 1996, in Dade County, Florida, Case No. B96-33111, the applicant was found guilty of carrying a concealed weapon. He was sentenced to credit for time served.
5. On February 21, 1996, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was indicted for sale, manufacture, or delivery of cocaine. On February 22, 1996, the applicant was adjudged guilty of the crime, he was sentenced to imprisonment for a term of 45 days, and ordered to pay \$255 in fines and costs.
6. On December 29, 1995, in Dade County Florida, Case No. [REDACTED] the applicant was arrested and charged with Count 1, possession of cocaine; and Count 2, possession of drug paraphernalia. On December 21, 1995, a "no action" was entered on the case.
7. On December 21, 1995, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with Count 1, possession of marijuana; and Count 2, possession of drug paraphernalia. He was found guilty as to Count 1, adjudication of guilt was withheld, and entry of sentence was suspended. A nolle prosequi was entered as to Count 2.
8. On July 26, 1995, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was indicted for Count 1, possession with intent to sell or deliver cannabis; and Count 2, unlawful sale or delivery of

cannabis. On September 21, 1995, the applicant entered a plea of guilty as to both Counts 1 and 2, the court found him guilty as to both counts, adjudication of guilt was withheld, he was sentenced to 71 days credit for time served, and ordered to pay \$255 in fines and costs.

9. On May 20, 1995, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with armed robbery. On June 29, 1995, a "no action" was entered on the case.

10. On March 31, 1994, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was found guilty of Count 1, aggravated assault with a deadly weapon; and Count 2, battery. Adjudication of guilt was withheld, and he was placed on probation for an unspecified period of time.

11. On September 15, 1993, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was convicted of battery. He was placed on probation for an unspecified period of time.

12. On June 13, 1990, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with Count 1, burglary (construction site), and Count 2, grand theft. On July 5, 1990, a "no information" was entered on the case.

Armed robbery is a crime involving moral turpitude (paragraph 2 above). Matter of Carballe, 19 I&N Dec. 357 (BIA 1986). Likewise, theft or larceny, whether grand or petty, is a crime involving moral turpitude (paragraph 3 above). Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974); Morasch v. INS, 363 F.2d 30 (9th Cir. 1966). Additionally, aggravated assault with a deadly weapon is a crime involving moral turpitude (paragraph 10 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.

The applicant is also inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on his convictions of possession of marijuana (paragraphs 1, 7, and 8 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, manufacture, or delivery (trafficking) of cocaine and cannabis (paragraphs 5 and 8 above). 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.