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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: 28 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

*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 section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I). 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....

The record reflects the following:

1. On November 21, 1998, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with Count 1, burglary (unoccupied structure); and Count 2, resisting an officer without violence. On December 24, 1998, the case was transferred to the County Court under Case No. [REDACTED]. The record, however, does not contain the court's final disposition of this case.

2. On August 13, 1998, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was indicted for Count 1, burglary of an unoccupied conveyance; and Count 2, grand theft. On September 16, 1998, the

applicant entered a plea of guilty to both Counts 1 and 2, he was found guilty as to both counts, adjudication of guilt was withheld, he was placed on probation for a period of one year, ordered to pay the sum of \$408 in fines and costs, to make restitution to the victim in the amount of \$110, and 100 hours in community service. Because the applicant violated the terms of his probation, his probation was modified by the court on December 23, 1998.

3. On April 17, 1998, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with burglary (auto) unoccupied. On May 8, 1998, a "no action" was entered on the case.

4. On April 7, 1997, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with theft/to deprive. On May 15, 1997, the applicant was convicted of the crime, adjudication of guilt was withheld, and he was ordered to pay \$150 in fines and costs.

5. On March 21, 1997, in Dade County, Florida [REDACTED] the applicant was arrested and charged with theft. The court's final disposition of this arrest is not contained in the record of proceeding.

6. On January 11, 1996, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with petit theft. On April 23, 1996, the applicant was found guilty of the charge, adjudication of guilt was withheld, and he was assessed \$105 in fines and costs.

Burglary (with intent to commit theft) is a crime involving moral turpitude (paragraph 2 above). Matter of M-, 2 I&N Dec. 721 (BIA 1982); Matter of Leyva, 16 I&N Dec. 118 (BIA 1977); Matter of Frentescu, 18 I&N Dec. 244, 245 (BIA 1982). The indictment report shows that the applicant did unlawfully enter or remain in a conveyance, without the consent of the owner or custodian, having an intent to commit theft. Likewise, theft or larceny, whether grand or petty, is a crime involving moral turpitude (paragraphs 2, 4, and 6 above). Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974); Morasch v. INS, 363 F.2d 30 (9th Cir. 1966).

The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on his convictions of crimes 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. Further, the applicant is not the recipient of an approved waiver of such grounds of inadmissibility, nor is there evidence in the record that he is eligible to file for such a waiver.

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.