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U.S. Department of Justice

Immigration and Naturalization Service

Identification 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: 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 sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I) and 1182(a)(2)(A)(i)(II). 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 submits a statement in the Spanish language. No English translation was included.

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).

The record reflects the following:

1. On November 5, 1984, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was adjudged guilty of Count 1, aggravated assault with

a deadly weapon (a firearm/pistol); and Count 2, possession of a controlled substance (cocaine). He was sentenced to imprisonment for a term of 3 years as to Count 1, and sentenced to imprisonment for a term of 58 days time served as to Count 2.

2. On July 16, 1993, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was indicted for Count 1, battery on a law enforcement officer; Count 2, resisting an officer with violence; and Count 3, battery. On September 1, 1993, the applicant was adjudged guilty as to all 3 counts, imposition of sentence was withheld, he was placed on probation for a period of one year, and ordered to pay \$255 in fines and costs.

3. On August 1, 1994, in the County Court, Dade County, Florida, Case No. [REDACTED] the applicant was convicted of criminal mischief. He was sentenced to imprisonment for a term of 31 days credit for time served.

Aggravated assault (with a firearm) is a crime involving moral turpitude (paragraph 1 above). Matter of Montenegro, 20 I&N Dec. 603 (BIA 1992); Matter of Chavez-Calderon, 20 I&N Dec. 744 (BIA 1993); Matter of Medina, 15 I&N Dec. 611 (BIA 1976); Matter of Baker, 15 I&N Dec. 50 (BIA 1974). Likewise, 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 (paragraph 3 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 2 above). See Matter of Danesh, 19 I&N Dec. 669, (BIA 1988). Pursuant to Florida Statute (FS) 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. The court's indictment record shows that the applicant did unlawfully, feloniously, and knowingly commit a battery upon a law enforcement officer while said person was then and there engaged in the lawful performance of duties, by actually and intentionally touching or striking said person against said person's will. The police report further shows that the applicant intentionally caused bodily harm to the officer by punching the officer behind the left ear and kicking the officer on the left

ankle causing the officer to lose balance and fall to the floor while the officer was attempting to arrest the applicant. Battery on a police officer, in this case, is a crime of moral turpitude

Further, the crime of resisting an officer with violence is analogous to assault (paragraph 2 above). Matter of Logan, 17 I&N Dec. 367 (BIA 1980). Pursuant to Florida Statute section 843.01, whoever willfully resists, obstructs, or opposes any officer..., or any person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, by offering or doing violence to the person of such officer or legally authorized person, is guilty of a felony of the third degree, punishable by a term of imprisonment not exceeding 5 years. Matter of Danesh, supra, also held that other assaults of an aggravated nature that do not involve the use of a deadly weapon have been deemed to be morally turpitudinous. It further held that the requirements that there be knowledge of the assaulted person's status as a peace officer and that the officer be discharging an official duty, established that the accused has used violence to intentionally interfere with the lawful functions of a peace officer. The police report and the indictment report clearly shows that the applicant had knowledge that he was assaulting a police officer who was discharging his official duty. Resisting an officer with violence, in this case, is a crime involving moral turpitude.

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 (paragraphs 1, 2, and 3 above).

The applicant is also inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on his conviction of possession of cocaine (paragraph 1 above). There is no waiver available to an alien found inadmissible under this section 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.