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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 July 17, 1989, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with retail theft. On May 31, 1990, the applicant was found guilty of the charge, adjudication of guilt was withheld, he was placed on probation for a period of 6 months, to obtain counseling at the Dade Community Mental Health Clinic, and to complete 25 hours community service in lieu of court costs.

2. On January 6, 1988, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with solicit to prostitution. On February 9, 1988, the applicant was found guilty of the charge and sentenced to imprisonment for a term of 5 days.

3. On December 16, 1982, in Hialeah, Florida, Case No. [REDACTED] the applicant was arrested and charged with retail theft. On December 17, 1982, the applicant was found guilty of the charge and sentenced to 2 days credit for time served.

4. On February 14, 1981, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with Count 1, abduction (false imprisonment); and Count 2, resisting arrest with violence. On February 4, 1982, the applicant was adjudged guilty of resisting an officer with violence to his person. He was placed on probation for a period of 2 years with special condition that he serves 90 days in the Dade County jail and attend Dade Community Mental Health Clinic for outpatient therapy.

Theft or larceny, whether grand or petty, is a crime involving moral turpitude (paragraphs 1 and 3 above). Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974); Morasch v. INS, 363 F.2d 30 (9th Cir. 1966).

Section 212(a)(2)(D) of the Act provides for the inadmissibility of any alien who --

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or ...

As defined in 22 C.F.R. 40.24(b):

The term "prostitution" means engaging in promiscuous sexual intercourse for hire. A finding that an alien has "engaged" in prostitution must be based on elements of continuity and regularity, indicating a pattern of behavior of deliberate course of conduct entered into primarily for financial gain or for other considerations of material value as distinguished from the commission of casual or isolated acts.

The record in paragraph 2 above reflects that on January 6, 1988, the applicant approached an undercover officer and asked her to come to his apartment in exchange for \$10. The applicant was subsequently arrested and charged with solicit to prostitution.

The applicant's conviction occurred on February 9, 1988, less than 10 years prior to the filing of the application for adjustment of status on March 29, 1996. However, documents contained in the

Service record do not support a finding that the applicant has engaged in prostitution based on elements of continuity and regularity. It appears, therefore, that the applicant is not inadmissible from the United States pursuant to section 212(a)(2)(D) of the Act.

Resisting an officer with violence to his person is analogous to assault (paragraph 4 above). The arrest report reflects that "while the applicant was being patted down he attempted to kick Officer...." Matter of Danesh, 19 I&N Dec. 669 (BIA 1988), modified Matter of B-, 5 I&N 538 (BIA 1953), and held that an assault against a peace officer, which results in bodily harm to the victim and which involves knowledge by the offender of the assaulted person's status as a peace officer who is performing an official duty, constitutes a crime involving moral turpitude.

The applicant in paragraph 4 above was convicted of the charge of resisting an officer with violence to his person. The arrest report in this case, however, does not show that the applicant had knowledge that he was resisting a peace officer who was discharging an official duty. While the report shows that he "attempted" to kick the officer, it failed to show such action resulted in bodily harm to the victim. Further, the applicant failed to submit the court's indictment or charging record to establish that the crime of resisting an officer with violence, in this case, is a crime 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 convictions of retail theft (paragraphs 1 and 3 above), found to involve crimes of 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.