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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

[redacted]

0 2 JUL 2002

FILE: [redacted] Office: Miami Date:

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 for

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
>
> (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 March 15, 1991, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, [redacted] the applicant was convicted of grand theft. Adjudication of guilt was withheld and the applicant was placed on probation for a period of 18 months.

2. On October 22, 1991, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, the applicant was indicted for Counts 1, 2, and 3, grand theft, and he was subsequently convicted of all 3 counts. Because the applicant violated the terms of his probation, on October 14, 1993, the probation was revoked and the applicant was adjudged guilty as to all 3 counts and sentenced to imprisonment for a term of 2 years. On November 29, 1993, a mitigated sentence was entered and the applicant was sentenced to imprisonment for a term of one year and one day as to Counts 1, 2 and 3 concurrently.

3. On November 23, 1993, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, the applicant was indicted for grand theft. On November 24, 1993, the applicant was adjudged guilty of the crime; he was sentenced to imprisonment for a term of 2 years concurrent with sentenced imposed in paragraph 2 above), and ordered to pay $255 in court costs and restitution to the victim in the amount of $529.58. On November 29, 1993, a mitigated sentence was entered and the applicant was sentenced to imprisonment for a term of one year and one day.

4. On April 4, 1995, in Dade County, Florida, the applicant was convicted of Count 1, petit larceny, and Count 2, possession of marijuana. He was sentenced to credit for time served as to both Counts 1 and 2.

5. On October 26, 1999, in Hollywood, Florida, the applicant was arrested and charged with theft to deprive. On December 1, 1999, the applicant was convicted of the crime; adjudication of guilt was withheld and he was imposed $143 in fines and costs.

6. On April 28, 2001, in Broward County, Florida, the applicant was arrested and charged with soliciting another for lewdness assignment. On June 13, 2001, the applicant was convicted of the crime and adjudication of guilt was withheld. It is not clear in the record what sentence was imposed on the applicant.

The applicant is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on his conviction of possession of marijuana (paragraph 4 above). While a waiver of grounds of inadmissibility under this section is available to an alien convicted of a single offense of simple possession of thirty grams or less of marijuana, the record does not show the amount of marijuana in the applicant's possession at the time of his arrest. It was held in Matter of Grijalva, 19 I&N 713 (BIA 1988), that where the amount of marijuana an alien has been convicted of possessing cannot be ascertained from the alien's conviction record, the alien must come forward with credible testimony or

other evidence to meet his burden of proving that his conviction related to 30 grams or less of marijuana.

Theft or larceny, whether grand or petty, is a crime involving moral turpitude (paragraphs 1, 2, 3, 4, and 5 above). Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974); Morasch v. INS, 363 F.2d 30 (9th Cir. 1966). Likewise, lewd and lascivious conduct is a crime involving moral turpitude (paragraph 6 above). See Matter of Garcia, 11 I&N Dec. 521 (BIA 1966).

Accordingly, the applicant is also 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 did the applicant file an application for waiver of grounds of inadmissibility (Form I-601) as had been requested by the district director.

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.