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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



25 JUL 2002

FILE:

Office: Miami

Date:

IN RE: Applicant:

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, 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.

In response to the notice of certification, the applicant requests reconsideration because the offenses were committed seven years ago and he will not have anymore problems because he is not a violent man.

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 October 15, 1995, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with battery (domestic violence). On December 6, 1995, the applicant was found guilty of the charge; adjudication of guilt was withheld, and he was placed on probation.

2. On November 8, 1995, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the

applicant was arrested and charged with battery. On December 5, 1996, the applicant was convicted of the charge; he was placed on probation for a period of one year and assessed \$105 in fines and costs.

Spousal/domestic abuse is a crime involving moral turpitude. Grageda v. INS, 12 F.3d 919 (9th Cir. 1993) Calif. Penal Code 273.5(a) [willful infliction of an injury upon a spouse, cohabitant, or parent of the perpetrator's child is a based and depraved act and is classified as a CIMT.] See also Corporal injury of a spouse/California Penal Code 273.5(a). [California courts found this violation to include "cruel or inhuman corporal punishment or injury." This crime is a CIMT.] In re Phong Nguyen Tran, Int. Dec. 3271 (BIA 1996). The infliction of bodily harm upon a person with whom one has such a familial relationship is an act of depravity which is contrary to accepted moral standards.

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 application for waiver of grounds of inadmissibility, filed by the applicant on February 13, 2001, was denied by the district director on January 9, 2002. No appeal on the denial of the waiver application was filed by the applicant.

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.