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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: 11 MAR 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

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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 numerous arrests and/or convictions relating to the applicant. However, only those arrests and/or convictions which may render the applicant inadmissible to the United States are listed below:

1. On January 30, 1985, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with lewd and lascivious behavior. Although the court's date of disposition of this case is not reflected on the record, the court record reflects that the applicant was sentenced to credit for time served.

2. On July 29, 1985, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with lewd and

lascivious behavior. Although the court's date of disposition of this case is not reflected on the record, the court record reflects that the applicant was sentenced to credit for time served.

3. On May 28, 1992, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with (1) petty theft and (2) exposure of sexual organs. On April 8, 1992, the applicant was found guilty of both counts, and he was sentenced to credit for time served as to both counts.

4. On January 18, 1996, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with grand theft. On February 8, 1996, the applicant was found guilty of the charge, the entry of sentence was suspended, and he was ordered to pay the sum of \$255 in fines and costs.

5. On October 18, 1998, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with burglary (unoccupied structure). A "no action" was entered by the court on November 9, 1998.

6. On August 4, 1999, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with lewd, lascivious, indecent assault in presence of a child. A "nolle pros" was entered by the court on October 31, 2000.

Theft or larceny, whether grand or petty, is a crime involving moral turpitude (paragraphs 3 and 4 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 (paragraphs 1 and 2 above). See Matter of Garcia, 11 I&N Dec. 521 (BIA 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.

It is noted for the record that the applicant's medical examination report (Form I-693) and other evidence in the record reflect that the applicant had been diagnosed with psychopathic personality which may render the applicant inadmissible to the United States pursuant to section 212(a)(1)(A)(iii)(I) or (II) of the Act, 8 U.S.C. 1182(a)(1)(A)(iii)(I) or (II). The Service must address this possible inadmissibility in any future decisions or proceedings.



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.