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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: 09 MAY 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), 212(a)(2)(A)(i)(II), and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I), 1182(a)(2)(A)(i)(II), and 1182(a)(2)(C). 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 expresses remorse for his past behavior. He states that his children, all U.S. citizens, are residing in the United States.

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).

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(C) Any alien who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is

or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

The record reflects the following:

1. On May 21, 1992, in Dade County, Florida, the applicant was arrested and charged with Count 1, first degree murder; Count 2, conspiracy to traffic in cocaine; and Count 3, possession of a firearm in commission of a criminal offense. On November 24, 1993, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant entered a plea of guilty to Count 1, manslaughter, as reduced; and Count 2, conspiracy to traffic in cocaine. He was sentenced to imprisonment for a term of 364 days followed by a period of 3 years of probation, each count to be served concurrently, and also concurrent with sentence imposed in Case No. [REDACTED] (paragraph 2 below).

2. On September 19, 1985, 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, battery on a law enforcement officer; and Count 3, battery on a law enforcement officer. On March 13, 1986, the applicant was adjudged guilty as to Counts 2 and 3, imposition of sentence was suspended, and he was placed on probation for a period of 9 months, Counts 2 and 3 concurrent. A "nolle pros" was entered as to Count 1. Because the applicant violated the terms of his probation, on March 24, 1993, the court revoked his probation and sentenced him to imprisonment for a term of 364 days.

3. On August 10, 1984, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with Count 1, kidnapping for ransom; and Count 2, armed robbery. On August 30, 1984, a "no information" was entered on the case.

4. On July 26, 1984, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was indicted for robbery. On January 28, 1985, a "nolle pros" was entered on the case.

5. On March 7, 1984, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was indicted for carrying a concealed firearm. On April 17, 1984, the applicant was found guilty of the crime, adjudication of guilt was withheld, and he was ordered to pay \$350 in fines and costs.

6. On February 6, 1984, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was indicted for Count 1, battery; and Count 2,

aggravated assault. On April 17, 1984, a "nolle pros" was entered on the case.

7. On September 24, 1983, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with Count 1, driving while license was suspended; Count 2, possession of cocaine; and Count 3, carrying a concealed firearm. On October 17, 1983, a "no information" was entered on the case.

Manslaughter (paragraph 1 above), as defined in Florida Statute 782.07, is generally a crime involving moral turpitude if death was caused by act of culpable negligence (intentional, willful, or reckless). While the court document shows that the applicant was convicted of manslaughter, the record does not contain a certified copy of the complete conviction record, including the charging document and arrest report. Therefore, a finding of the applicant's inadmissibility under section 212(a)(2)(A)(i)(I) of the Act based on this conviction will not be made at this time.

Battery on a law enforcement officer (paragraph 2 above) 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. See Matter of Danesh, 19 I&N Dec. 669, (BIA 1988).

Pursuant to Florida Statute 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 indictment report (paragraph 2 above) shows that the applicant had knowledge that the victims were law enforcement officers who were performing official duties, and that the applicant actually and intentionally touched the officers. Additionally, the arrest report shows that the applicant was involved in a domestic violence, and when the officers entered his residence, the applicant became loud and started screaming at the officers. While the officers were trying to calm him down, he became more violent and when he was advised that he was under arrest, he struck officer #1 on the left arm with a closed fist; he then turned and struck officer #2 on the chest with his fist; while the officer was attempting to handcuff the applicant, he again struck officer #1 around the chest area and back. The officers, therefore, used what force was necessary to complete the arrest. Thus, the crime of

battery on a law enforcement officer (two counts) 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 two counts of crimes involving moral turpitude.

The applicant is also inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act based on his conviction of conspiracy to traffic in cocaine (paragraph 1 above). There is no waiver available to an alien found inadmissible under these sections 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.