



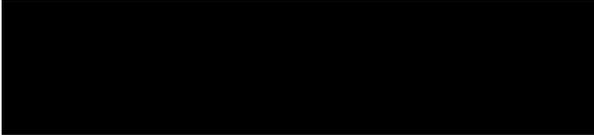
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U.S. Department of Justice

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: 

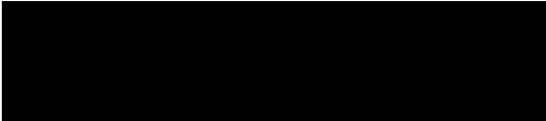
Office: Miami

Date: MAY 10 2002

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:



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 determined that the applicant's one misdemeanor conviction of a crime involving moral turpitude falls under the exemption provided by section 212(a)(2)(A)(i)(I); however, the applicant's behavior was so deplorable that a favorable exercise of discretion by the Attorney General can not be exercised. The district director, therefore, denied the application.

In response to the notice of certification, counsel asserts that the Service has erred by giving weight to the applicant's 1993 and 1995 arrests as these arrests did not result in convictions and therefore cannot be given any weight whatsoever as adverse factors. Counsel contends that the applicant has significant outstanding equities, such as, his length of residence in the United States; he has family ties in the United States; hardship factors; home country conditions; the economic and political conditions in Cuba; and his age.

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....

Spousal abuse/domestic abuse is a crime involving moral turpitude. Grageda v. INS, 12 F.3d 919 (9th Cir. 1993) Calif. Penal Code [redacted] [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 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.

Based on the applicant's conviction on July 21, 1994, of battery (domestic violence), the district director noted that while this crime involves moral turpitude, it is a misdemeanor offense and, therefore, falls under the exemption provided in section 212(a)(2)(A)(i)(I) of the Act. However, he noted that the applicant was arrested on July 21, 1993 for domestic assault and on November 7, 1995 for battery/domestic violence and resisting arrest without violence (both arrests subsequently dismissed for lack of prosecution), and that the applicant has no respect whatsoever for an individual who has shared at least some part of her life with him; and that physical abuse is a morally reprehensible offense, yet an act of such vile nature is even more heinous when committed against a person he is morally obligated to protect. The district director determined that the applicant's behavior was so deplorable that a favorable exercise of discretion by the Attorney General can not be exercised.

Counsel asserts that the Service has erred by giving weight to the applicant's 1993 and 1995 arrests as these arrests did not result in convictions and, therefore, cannot be given any weight whatsoever as adverse factors. He contends that the applicant has significant outstanding equities: (1) his length of residence in the United States (over 30 years); (2) he has family ties in the United States (wife, daughter, son, step-daughter, mother, grandchildren, and siblings); (3) hardship factors; (4) home country conditions; and (5) age (61 years old).

Counsel further states that the applicant's deportation (removal): (1) would result in the loss of a second income as well as the loss of a companion of over 30 years, and the applicant's spouse, children, grandchildren, and mother will face substantial psychological, emotional and economic hardship; (2) would result in the likelihood that he will not be able to find employment based on economic and political conditions in Cuba; and (3) he would have to start over without a job, home, or family, and starting over at the age of 61 years is much harder than at 30. Counsel submits affidavits from the applicant's wife, from his girlfriend, from his step-daughter, from the pastor of his church, and a copy of his refugee travel document.

It was held in Matter of Arai, 13 I&N Dec. 494 (BIA 1970), that where adverse factors are present in a given application for adjustment of status, it may be necessary for the applicant to offset these by a showing of unusual or even outstanding equities. Generally, favorable factors such as family ties, hardship, length of residence in the United States, etc., will be considered as

countervailing factors meriting a favorable exercise of administrative discretion. In the absence of adverse factors, adjustment will ordinarily be granted, still as a matter of discretion. (Emphasis added).

The district director noted that the only favorable factor in this case is the applicant's length of residence in the United States and his family ties (his wife is a United States citizen, and his mother and daughter are lawful permanent residents. The applicant, however, has not established that his departure from the United States would result in any unusual hardship to his U.S. citizen spouse and family.

Furthermore, a review of the record of proceeding reflects that the applicant may be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Act which states, in part:

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or entry into the United States or other benefit provided under this Act is inadmissible.

The record of proceeding contains the applicant's record of sworn statement before an officer of the Service on September 5, 1972, in which he admitted that he met a man in Madrid, Spain, by the name of Luis, who stated that he could get documents for the applicant's travel to the United States. Luis stated to him that he (the applicant) and another Cuban would have to travel to Holland with him; they remained in Holland for two weeks before Luis handed them the Portuguese passports which contained a visa from the American Embassy in Holland. [The record shows that the fraudulent Portuguese passport was issued under the name of [REDACTED] The applicant claimed that he paid a total of \$1300 for the documents and a round trip ticket [REDACTED] He stated that upon arrival at Kennedy Airport in New York on June 25, 1971, the immigration officer stated that he would not be admitted into the United States and would have to be returned to Holland; he and the other Cuban were returned to the aircraft and were boarded for the return trip to Holland; shortly after boarding, however, they got off the plane and made their way outside and took a taxi to a friend's home.

The record of proceeding further contains a copy of a refugee travel document issued to the applicant on May 15, 1979. The applicant twice entered and was paroled into the United States based on this travel document. The travel document, however, appears to have been erroneously issued by the Service. Pursuant to 8 C.F.R. 223.2(b)(2), an application may be approved if filed by a person who is in the United States at the time of application, and either holds valid refugee status under section 207 of the Act,

valid asylum status under section 208 of the Act, or is a permanent resident and received such status as a direct result of his or her asylum or refugee status. The applicant, in this case, was neither a refugee nor an asylee. Rather, he claimed to have entered into the United States with a fraudulent passport and subsequently absconded after boarding the aircraft for the return trip to Holland.

Accordingly, the applicant has not established by supporting evidence that the favorable factor outweighs the unfavorable ones. An applicant for adjustment of status who meets the objective prerequisites is merely eligible to apply for adjustment of status. He is in no way entitled to adjustment. See Matter of Tanahian, 18 I&N Dec. 339 (Reg. Comm. 1981). When an alien seeks the favorable exercise of discretion of the Attorney General, it is incumbent upon him to establish that he merits adjustment. It is, therefore, concluded that the applicant has failed to establish that he warrants a favorable exercise of the Attorney General's discretion.

Accordingly, the district director's decision to deny the application as a matter of discretion will be affirmed.

ORDER: The district director's decision is affirmed.