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U.S. Department of Justice
Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: 

Office: Miami

Date: 30 OCT 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: 

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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 Acting District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The acting 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 acting district director found the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(II). The acting district director, therefore, 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 February 20, 1985, in the Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County, Florida, Case No. [REDACTED] the applicant was indicted for Count 1, possession of barbiturates, and Count 2, possession of cannabis. On January 13, 1986, the applicant was adjudged guilty as to both Counts 1 and 2. Imposition of sentence was withheld and he was placed on probation for a period of 2 years as to Count 1, and sentence was suspended as to Count 2. Because the applicant violated the terms of his

probation, on April 2, 1992, his probation was revoked and he was sentenced to imprisonment for a term of 2 years and 6 months with credit for time served as to Count 1.

The Federal Bureau of Investigation (FBI) report reflects the following arrests. The court's final dispositions of these arrests, however, are not contained in the record of proceeding:

2. Arrested on March 8, 1984, in Tampa, Florida, and charged with possession of drugs (marijuana).

3. Arrested on September 5, 1985, in Tampa, Florida, and charged with (1) trespassing on property, and (2) possession of marijuana (probation violation).

4. Arrested on May 29, 1987, in Tampa, Florida, and charged with aggravated battery. The FBI reports shows that this charge was dismissed on July 22, 1987.

5. Arrested on July 30, 1987, in Hillsborough County, Florida, and charged with (1) contempt of court, (2) 2 counts of burglary, and (3) grand larceny.

6. Arrested on January 10, 1988, in Tampa, Florida, and charged with (1) petty larceny, and (2) possession of marijuana.

Aggravated battery, burglary, and grand larceny are found to involve moral turpitude, and convictions of such crimes may render the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. The applicant, however, failed to submit the arrest reports and the court's final dispositions of these arrests.

The applicant, however, 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 barbiturates (paragraph 1 above). There is no waiver available to an alien found inadmissible under this section 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 acting district director to deny the application will be affirmed.

ORDER: The acting district director's decision is affirmed.