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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 SEP 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 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 District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The Associate Commissioner affirmed the decision of the district director to deny the application. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be dismissed.

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.

The district director denied the application as a matter of discretion after determining that although it appeared the applicant's conviction of the reduced charge of simple battery was not a crime involving moral turpitude pursuant to 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 crime is egregious enough, indeed frighteningly so, that a favorable exercise of discretion by the Attorney General can not be exercised. The district director further noted that the applicant failed to submit copies of the arrest report and the final court disposition of all his other arrests.

On November 20, 2001, the Associate Commissioner concurred with the district director's conclusion and affirmed his decision to deny the application as a matter of discretion.

On motion, the applicant expresses remorse for his actions and explained that the incidents that led to his arrests happened when he was under the influence of alcohol; however, he does not drink alcohol anymore and he has been living a normal life for many years. He submits court dispositions of his arrests.

Pursuant to 8 C.F.R. 103.5(a)(1)(i), any motion to reopen or reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider, 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 was beyond the control of the applicant or petitioner.

8 C.F.R. 103.5a provides, in part, that authorized means of service by the Service on parties and on attorneys and other interested persons of notices, decisions, and other papers may be effected by any of the following:

- (a) (1) Routine service. Routine Service consists of mailing a copy by ordinary mail addressed to a person at his last known address.

(b) Effect of service by mail. Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. Service by mail is complete upon mailing.

The record reflects that on November 20, 2001, the decision of the Office of Administrative Appeals was mailed to the petitioner at his last known address. The decision instructed the applicant that any motion to reopen or reconsider must be filed within 30 days of the decision that the motion seeks to reconsider. The applicant, on motion, has not demonstrated that the delay was reasonable and was beyond his control. Nor did the applicant offer an explanation as to the reason for the delay in filing.

The petitioner had 30 days after November 20, 2001, in which to file a motion to reopen or a motion to reconsider. 8 C.F.R. 103.5(a)(1)(i). This motion was received by the Service on May 14, 2002. Pursuant to 8 C.F.R. 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed.