

PUBLIC COPY

Identifying information deleted to
prevent clearly and undeniably
invasion of personal privacy

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

AA

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



AUG 08 2003

FILE: 

Office: Miami

Date:

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)

ON BEHALF OF APPLICANT: Self-represented

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

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 Administrative Appeals Office 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 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 acting 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

(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).

(B) Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

(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 numerous arrests and convictions relating to the applicant. The acting district director's decision provides a complete list, therefore, that list will not be repeated here. Only those convictions that may render the applicant inadmissible to the United States are addressed below:

1. Convicted of aggravated battery on a pregnant victim (sentenced to 6 months of imprisonment)
2. Convicted of assault of spouse
3. 2 convictions of petty larceny
4. Convicted of 2 counts of sale, manufacture or delivery of cocaine (sentenced to 6 months of imprisonment)
5. Convicted of 2 counts of possession of cocaine
6. Convicted of trafficking in cocaine (sentenced to 5 years of imprisonment)

Aggravated assault or battery is a crime involving moral turpitude. *Matter of P-*, 7 I&N Dec. 376 (BIA 1956); *Matter of Goodalle*, 12 I&N Dec. 106 (BIA 1967); *Matter of Baker*, 15 I&N Dec. 50 (BIA 1974). Likewise, theft or larceny, whether grand or petty, is a crime involving moral turpitude. *Matter of Scarpulla*, 15 I&N Dec. 139 (BIA 1974); *Morasch v. INS*, 363 F.2d 30 (9th Cir. 1966). Additionally, spousal/domestic abuse (assault of spouse) is a crime involving moral turpitude. *Grageda v. INS*, 12 F.3d 919 (9th Cir. 1993) Calif. Penal Code 273.5(a) [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 Corporal injury of a spouse/California Penal Code 273.5(a). [California courts found this violation to include "cruel or inhuman corporal punishment or injury." This crime is a CIMT.] *Matter of Phong Nguyen Tran*, 21 I&N Dec. 291 (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.

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 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 convictions of possession and sale, manufacture or delivery, and trafficking in controlled substances. 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. Additionally, the applicant is inadmissible to the United States, pursuant to section 212(a)(2)(B) of the Act, based on his convictions of 2 or more offenses for which the aggregate sentences to confinement actually imposed were 5 years or more (1, 4, and 6 above).

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.