

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

A2

FILE:

Office: MIAMI, FLORIDA (ORLANDO)

Date: AUG 28 2007

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 of the Administrative Appeals Office 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Miami, Florida, who certified her decision to the Administrative Appeals Office (AAO) for review. The District Director's decision will be affirmed. The AAO notes that the individual who filed a Form G-28, Notice of Entry of Appearance as Attorney or Representative is not an attorney and does not provide any legal authority allowing representation. As such, the AAO will not recognize this individual as a representative.

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 (CAA) of November 2, 1966. The CAA provides, in part:

[T]he 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, may be adjusted by the Attorney General, (now the Secretary of Homeland Security, (Secretary)), in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and 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 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 District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See District Director's Decision* dated January 11, 2007.

Section 212(a)(2)(A) of the Act states in pertinent part:

(i) [A]ny 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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

The record reveals on May 23, 1997, the applicant entered a plea of guilty to Grand Theft 3<sup>rd</sup> Degree; Possession of a Motor Vehicle with Altered Identification; and Dealing in Stolen Property. *See Judgment, Case Number 97-11402, Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida*, dated May 23, 1997. The

applicant was sentenced to 240 days in jail. *See Sentence, Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida.* In a separate case recorded on the same day, the applicant entered a plea of guilty to Operating a Chop Shop; Grand Theft Second Degree; and Possession of Motor Vehicle with Altered Identification. *See Judgment, Case Number 97-13192, Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, dated May 23, 1997.* The applicant was sentenced to 240 days in jail to be served concurrently with his previously noted sentence. *See Sentence, Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida.* On May 20, 1998 the applicant was arrested for petit larceny, theft. *See criminal record, Eleventh Judicial Circuit of Florida, in and for Miami-Dade County.* Adjudication was withheld on August 20, 1998 and the applicant received a fine. *Id.*

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the District Director's findings. The applicant did not submit a brief or other written statements.

The applicant's convictions for theft constitute crimes involving moral turpitude. *See Matter of Alarcon, 20 I&N Dec. 557 (BIA 1992)* noting that grand theft is a crime involving moral turpitude. *See Also Matter of Kim, 17 I&N Dec. 144 (BIA 1979)* finding larceny to be a crime involving moral turpitude.

As the applicant has been convicted of crimes involving moral turpitude under Section 212(a)(2)(A)(i)(I) of the Act, the applicant is ineligible for adjustment of status to permanent residence, pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966. The record reflects that the applicant's father is deceased and his mother resides in Cuba. *Form G-325A, Biographic Information sheet for the applicant.* The applicant is not married and does not have any children. *Form I-485.* As the applicant does not have a qualifying relative, he is not eligible for a waiver under Section 212(h) of the Act.

The decision of the District Director to deny the application will be affirmed. An applicant must demonstrate by a preponderance of the evidence that he is eligible for the benefit sought. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, places the burden of proof upon the applicant to establish that eligibility. The applicant has not met his burden of proof in this particular case.

**ORDER:** The District Director's decision is affirmed.