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U.S. Citizenship
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Services

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FILE:



Office: ORLANDO, FLORIDA

Date: DEC 18 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting Field Office Director, Orlando, Florida, who certified her decision to the Administrative Appeals Office (AAO) for review. The Acting Field Office 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 (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 Acting Field Office Director found the applicant inadmissible to the United States because she 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 Acting Field Office Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See Acting Field Office Director's Decision*, dated July 25, 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 that on September 10, 1996 the applicant was arrested for shoplifting in Arizona. *FBI printout report*. The applicant was found guilty and sentenced to one day in jail. *Id.* On April 16, 1998 the applicant was convicted of grand theft in the third degree under section 812.014(2)(C)(1) of the Florida Statutes. *See court records, Circuit Court of the Ninth Judicial Circuit, Orange County, Florida*, dated April 16, 1998. The

applicant was sentenced to two days in jail and 18 months of probation, and was ordered to perform community service and to pay fines. *Id.* On February 9, 2000 the applicant was convicted of petit theft (retail) under section 812.014(3)(A) of the Florida Statutes. *See court records, Circuit Court of the Ninth Judicial Circuit, Orange County, Florida*, dated February 9, 2000. The applicant was sentenced to 15 days in jail and ordered to pay fines. *Id.* On August 5, 2000 the applicant was arrested for petit larceny in Florida. *FBI printout report*. The record does not include a disposition for this arrest. On July 3, 2002 the applicant was convicted of petit theft (retail) under section 812.014(3)(A) of the Florida Statutes. *See court records, Circuit Court of the Ninth Judicial Circuit, Orange County, Florida*, dated July 3, 2002. The applicant was ordered to pay fines. *Id.* On August 29, 2002 the applicant was convicted of grand theft under section 812.014(2)(C)(1) of the Florida Statutes. *See court records, Circuit Court of the Ninth Judicial Circuit, Orange County, Florida*, dated August 29, 2002. The applicant was sentenced to three days in jail and three years probation, and was ordered to perform community service and to pay fines. *Id.* On October 9, 2002 the applicant was convicted of petit theft (retail) under section 812.014(3)(A) of the Florida Statutes. *See court records, Circuit Court of the Ninth Judicial Circuit, Orange County, Florida*, dated October 9, 2002. The applicant was ordered to pay fines. *Id.* On January 21, 2005 the applicant was convicted of petit theft of \$100 or more under section 812.014(2)(E) of the Florida Statutes. *See court records, Circuit Court of the Ninth Judicial Circuit, Orange County, Florida*, dated January 21, 2005. The applicant was sentenced to 20 days in jail and ordered to pay court costs. *Id.* On April 15, 2005 the applicant was convicted on petit theft (prior theft conviction) under section 812.014(3)(B) of the Florida Statutes. *See court records, Circuit Court of the Ninth Judicial Circuit, Orange County, Florida*, dated April 15, 2005. The applicant was sentenced to 365 days in jail, three days of which had been served and 182 days were suspended on the condition that 180 days were to be served in home confinement. *Id.*

The applicant was convicted under Florida Statute § 812.014 which reads in pertinent part:

- (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:
 - (a) Deprive the other person of a right to the property or a benefit from the property.
 - (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

Under *Matter of Grazley*, the Board found that ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended. 14 I. & N. Dec. 330 (BIA 1973). As the relevant statute involves some offenses which do involve moral turpitude and others which do not, it is treated as a “divisible” statute. *Id.* Therefore it is permissible to look beyond the statute to consider such facts as may appear from the record of conviction to determine whether the conviction was rendered under the portion of the statute dealing with crimes that do involve moral turpitude. *Id.* The record of conviction includes the charge (indictment), plea, verdict and sentence. *Zaffarano v. Corsi*, 63 F.2d 757 (2d Cir. 1933).

The Charging Affidavit used for the applicant’s April 16, 1998 conviction states that the applicant stole \$1,094.96 worth of merchandise from Dillard’s clothing department store. *Charging Affidavit, Orange County*, dated January 11, 1998. The applicant and one other individual placed Dillard’s bags in the trunk of a car and then entered the car. *Id.* An officer approached the applicant and looked inside the trunk of the car

where he found four Dillard's bags containing items with no receipts. *Id.* Dillard's confirmed that none of the items were paid for. *Id.* The Charging Affidavit used for the applicant's August 29, 2002 conviction states that the applicant attempted to take the property of another totaling \$502.00 with the intent to deprive the owner of it. *Charging Affidavit, Orange County*, dated June 9, 2002. The Charging Affidavit used for the applicant's July 3, 2002 conviction states that the applicant entered a business and was seen taking two boxes of Goya seasoning packs, three packs of air fresheners, one pair of utility snips, one spotless dryer towel, one 1.66 lb of cheese, and one utility pouch with belt totaling \$54.02 for which the applicant did not pay. *Charging Affidavit, Orange County*, dated May 22, 2002. The Charging Affidavit used for the applicant's October 9, 2002 conviction states that the applicant was in custody for shoplifting at Walmart. *Charging Affidavit, Orange County*, dated June 9, 2002.

The AAO observes that the applicant took merchandise consisting of food, clothing, and household items. As this type of merchandise is used for consumption, the AAO finds that it is reasonable to conclude that the applicant intended to permanently deprive the owners of these items. *See Matter of Grazley*, 14 I. & N. Dec. 330 (BIA 1973). As such, the AAO concurs with the Acting Field Office Director's finding that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) for having been convicted of crimes involving a moral turpitude. The AAO notes that the applicant filed a Form I-601 waiver of inadmissibility, however, the record does not demonstrate that the applicant has a qualifying relative. The AAO thus finds that the applicant is not eligible for a waiver of inadmissibility.

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that she is eligible for adjustment of status. She has failed to meet that burden. The decision of the Acting Field Office Director to deny the application will be affirmed.

ORDER: The Acting Field Office Director's decision is affirmed.