



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: 10 7 2001

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

[Handwritten signature]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

[Handwritten signature]
Robert P. Wiemann, Acting 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 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 district director found the applicant inadmissible to the United States 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 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 Immigration and Nationality Act (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....

The record reflects that on November 22, 1996, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] the applicant was indicted for Count 1, resisting an officer with violence; Count 2, battery; Count 3, criminal mischief; and Count 4, resisting an officer without violence. On November 25, 1996, the applicant entered a plea of guilty as to all 4 counts, adjudication of guilt was withheld, he was placed on probation for a period of one year as to Counts 1, 2, and 4, sentence was suspended as to Count 3, and he was required to pay \$255 in fines and costs.

Criminal mischief, as defined in Florida Statute 806.13 ("..willfully and maliciously injures or damages by any means any real or personal property belonging to another.."), is a crime

involving moral turpitude. See Matter of M-, 3 I&N Dec. 272 (BIA 1948) (Malicious Destruction of Property).

Additionally, the district director found that the applicant's conviction of resisting an officer with violence is a crime involving moral turpitude. The arresting officer's report was cited in its entirety by the district director in his decision. Therefore, the arrest report will not be repeated here. Pursuant to Florida Statute section 843.01, whoever willfully resists, obstructs, or opposes any officer..., or any person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, by offering or doing violence to the person of such officer or legally authorized person, is guilty of a felony of the third degree, punishable by a term of imprisonment not exceeding 5 years. The crimes of interfering with a law enforcement officer and resisting an officer with violence are analogous to assault. Matter of Logan, 17 I&N Dec. 367 (BIA 1980). Matter of Danesh, 19 I&N Dec. 669 (BIA 1988), also held that other assaults of an aggravated nature that do not involve the use of a deadly weapon have been deemed to be morally turpitudinous. It further held that the requirements that there be knowledge of the assaulted person's status as a peace officer and that the officer be discharging an official duty, established that the accused has used violence to intentionally interfere with the lawful functions of a peace officer. The report clearly shows that the applicant had knowledge that he was assaulting police officers who were discharging their official duties. Resisting an officer with violence, in this case, is a crime involving moral turpitude.

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 was offered an opportunity to submit evidence in opposition to the district director's findings. No additional evidence has been entered into the record of proceeding. Further, the applicant is not the recipient of an approved waiver of such grounds of inadmissibility, nor is there evidence in the record that he is eligible to file for such a waiver.

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 district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.