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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship
and Immigration
Services

A2

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA (ORLANDO) Date: OCT 30 2007

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)

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.

Ellen C. Johnson

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 The District Director's decision will be withdrawn. The matter will be remanded to the District Director for further processing.

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 that the applicant entered a plea of guilty to a Grand Theft 3rd Degree Felony under Florida Statute § 812.014(1)(2)(c) and on April 26, 2001 the court ordered that adjudication of guilt be withheld. *Judgment, Circuit Court of the Fifteenth Judicial Circuit of Florida in and for Palm Beach County*, dated April 26, 2001. The court ordered the applicant committed to the custody of the Sheriff of Palm Beach County, Florida

for a term of time served. *Sentence, Circuit Court of the Fifteenth Judicial Circuit of Florida in and for Palm Beach County*, dated April 26, 2001.

Section 101(a)(48)(A) of the Act provides, in pertinent part:

> (48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—
>
> (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contender or has admitted sufficient facts to warrant a finding of guilt, and
>
> (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed
>
> (B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

As such, the AAO finds that the applicant has been convicted of Grand Theft 3rd Degree Felony.

The District Director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for the conviction or commission of a crime involving moral turpitude. *See District Director's Decision* dated January 11, 2007. The AAO finds the District Director's decision was in error.

The applicant was convicted under Florida Statute § 812.014(1)(2)(c) 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 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 AAO notes that there is nothing in the record of conviction in this particular case that supports a finding that the applicant's conviction for theft involved a permanent

intent. *See Judgment, Circuit Court of the Fifteenth Judicial Circuit of Florida in and for Palm Beach County*, dated April 26, 2001. Therefore, the AAO finds that this is not a crime involving moral turpitude and thus the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) based on this conviction. Accordingly, the District Director's decision will be overturned.

The AAO notes, however, that the applicant was arrested on April 8, 2004 for violating a domestic violence injunction under Florida Statute § 741.31 and the record contains no evidence regarding the disposition of any charges brought against him. As a conviction under § 741.31 requires a finding of intent, it could render the applicant inadmissible to the United States for having committed a crime of moral turpitude. Court documents are necessary to determine whether the applicant was convicted under this statute and, if so, whether he qualifies for the petty offense exception of section 212(a)(2)(ii)(II) of the Act. Accordingly, the AAO will remand the case to the District Director for further consideration consistent with this discussion.

ORDER: The District Director's decision is withdrawn. The case is remanded to the District Director for further processing.