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**U.S. Citizenship
and Immigration
Services**

L2

FILE:

[REDACTED]

Office: NATIONAL BENEFITS CENTER

Date: DEC 21 2005

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

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, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, National Benefits Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application as he determined that either there was a reason to believe that the applicant was illicit trafficker or the applicant had been convicted of trafficking controlled substance.

On appeal, counsel argues that the applicant had not been convicted of controlled substance trafficking and that the decision is arbitrary and abuse of discretion.

The regulation at 8 C.F.R. § 245a.18(a) states in part that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for adjustment to LPR status.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy 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 USC 802). Section 212(a)(2)(A)(i)(II) of Immigration and Nationality Act (the Act). An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(C) of the Act.

The FBI record reflects that on October 6, 1993, the applicant was arrested under the alias [REDACTED] by the Bay Transit Authority Police in South Boston, Massachusetts and charged with intent to sell drug, class B.

The FBI record also reflects that on December 29, 1994, the applicant was arrested under the alias [REDACTED] by the Boston Police Department and charged with possession with intent – cocaine, class B.

The director issued a Request for Additional Evidence dated June 20, 2003, which advised the applicant of his two arrests. The applicant was given 87 days in which to submit certified court documents for each arrest. The applicant, however, failed to respond to the notice, and director denied the application.

An alien is inadmissible, as noted above, if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. As the record fails to contain either the arrest reports detailing the circumstances of his arrests or the final court dispositions, there is not ample reason to believe that the applicant was in fact an illicit trafficker or had been convicted of a controlled substance.

Nevertheless, the applicant was requested to submit the court dispositions for each arrest, but failed to do so. The applicant has the burden to establish, with **affirmative** evidence that outstanding charges or arrests did not result in a conviction.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

An alien applying for adjustment of status under the provisions of section 1140 of the LIFE Act has the burden of proving by a preponderance of evidence that he is admissible to the United States under the provisions of section 212(a) of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.11. The applicant has failed to meet this burden

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.