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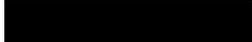
U.S. Citizenship  
and Immigration  
Services

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**NOV 30 2005**

FILE:  Office: NATIONAL BENEFITS CENTER

Date:

IN RE: Applicant: 

PETITION: 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: 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. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

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. This matter will be remanded for further action and consideration.

The director determined that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA), because he had been convicted of a crime involving moral turpitude in the United States. Therefore, the director concluded the applicant was ineligible for permanent resident status under the LIFE Act and denied the application.

On appeal, the applicant asserts that his misdemeanor conviction for inflicting a corporal injury upon his spouse was not sufficient to render him inadmissible under section 212(a)(2)(A)(i)(I) of the INA because the petty theft exception contained at section 212(a)(2)(A)(ii) of the INA specifically applied to this conviction.

The applicant appears to be represented; however, the record contains no Form G-28, Notice of Entry of Appearance as an Attorney or Representative, as required by 8 C.F.R. § 292.4(a). Although all representations will be considered, the notice of decision will be furnished only to the applicant.

The record contains a report from Federal Bureau of Investigation (F.B.I.), which based upon fingerprint comparison reflects that the applicant was arrested by the San Diego, California Sheriff's Office on August 26, 1987, and charged with battery under sections 242 and 243 of the California Penal Code. The F.B.I. report further reflects that the applicant was subsequently convicted of a violation of section 273.5 of the California Penal Code, inflicting a corporal injury upon his spouse in the San Diego, California Municipal Court and sentenced to ninety days in jail and three years of probation.

While the director was correct in concluding that the applicant had been convicted of a crime involving moral turpitude under section 212(a)(2)(A)(i)(I) of the INA, the director did not consider whether the applicant was still considered to be inadmissible under the following exceptions contained at section 212(a)(2)(A)(ii) of the INA:

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

In this case, the applicant was born on October 4, 1964 and convicted of a crime involving moral turpitude at the age of 22 subsequent to August 26, 1987. Therefore, the exception contained at section 212(a)(2)(A)(ii)(I) of the INA does not apply to the applicant as he was over 18 years of age at the time of his conviction. While the applicant contends that his conviction for inflicting a corporal injury upon his spouse was not sufficient to render him inadmissible under section 212(a)(2)(A)(i)(I) of the INA because the petty theft exception contained at section 212(a)(2)(A)(ii) of the INA specifically applied to this conviction on appeal, the record contains no evidence to establish the maximum penalty possible for the crime of which the applicant was convicted did not exceed imprisonment for one year. Without such evidence it cannot be concluded that the exception contained at section 212(a)(2)(A)(ii) of the INA applies to the applicant in this case.

In addition, the regulations at 8 C.F.R. § 245a.20(a)(2) state, in pertinent part:

*Denials.* The alien shall be notified in writing of the decision of denial and of the reason(s) therefore. When an adverse decision is proposed, CIS shall notify the applicant of its intent to deny the application and the basis for the proposed denial. The applicant will be granted a period of 30 days from the date of the notice in which to respond to the notice of intent to deny. All relevant material will be considered in making a final decision.

A thorough review of the applicant's file reveals that a notice of intent to deny was not issued to him in the current proceedings. Accordingly, the decision of the director is withdrawn. The case will be remanded for the purpose of the issuance of a new notice of intent to deny as well as a new final decision to the applicant and counsel. The new decision, if adverse to the applicant, shall be certified to this office for review.

**ORDER:** This matter is remanded for further action and consideration pursuant to the above.