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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

PUBLIC COPY

[REDACTED]

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FILE:

[REDACTED]

MSC 02 240 64704

Office: HOUSTON

Date:

MAY 19 2008

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. The file has been returned to the National Benefits Center. 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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Houston, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The director denied the application pursuant to Section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act. The director determined the applicant had been convicted for manufacturing/distributing/dispensing a class B Controlled Substance in violation of Chapter 94C, Section 32A of the Massachusetts General Laws.

On appeal, counsel asserts that the applicant has never been arrested in the United States or any other country. Counsel contends that the applicant is a victim of identity theft and the FBI record reflects crimes committed by an imposter. Counsel submits the applicant's fingerprint card indicating that a search of the FBI Criminal Justice Information Services Division's file resulted in no arrest record.

Section 212(a)(2)(A)(i) of the Immigration and Nationality Act states:

In general. – Except as provided in clause (ii), 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
- (II) a violation of (or a conspiracy or attempt 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 U.S.C. 802),

is inadmissible.

The record indicates that the applicant was arrested on January 8, 1996, for manufacturing/distributing/dispensing a Class B Controlled Substance (Docket No. 9611 CR197). The record indicates that the applicant entered a guilty plea on April 10, 1996.

Counsel asserts that the applicant has been fingerprinted twice by the Department of Homeland Security in connection with his application and the criminal record continues to appear. In a May 31, 2005, letter counsel contends that Ms. [REDACTED], an analyst for the FBI Fingerprint Division, advised that the applicant's fingerprints have shown him to be clear of any criminal arrest record whatsoever.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, counsel has submitted the applicant's fingerprint card

indicating that an October 3, 2006, search of the FBI Criminal Justice Information Services Division's file resulted in no arrest record.

The AAO finds that a comparison of the applicant's fingerprints and the fingerprints on record from the 1996 arrest must occur in order to resolve this matter. The case is remanded in order that the Service can obtain a new fingerprint card from the applicant and his fingerprints be compared to those on record for the 1996 arrest by an independent analyst.

It is also noted that the record reflects that on July 16, 1998, the applicant was arrested and charged with *assault and battery*, in violation of Chapter 265, Section 13a, of the Massachusetts General Law. The record indicates that the applicant entered a guilty plea on November 6, 1998, and was sentenced to probation. The record also reflects that the applicant was simultaneously charged with *complaint of threat to commit crime*, in violation of Chapter 275, Section 2, of the Massachusetts General Law. The record does not contain the disposition of this charge.

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.

The record does not reflect that the applicant was issued a notice of intent to deny. Accordingly, the case will be remanded for the purpose of resolving the fingerprint issue and the issuance of a notice of intent to deny, if appropriate, as well as a new final decision to the applicant. The new decision, if adverse to the applicant, shall be certified to this office for review.

**ORDER:** The director's decision is withdrawn. This matter is remanded for further action and consideration pursuant to the above.