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U.S. Citizenship
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MAY 11 2006

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: [REDACTED]

APPLICATION: Application for Permanent Residence Pursuant to the Nicaraguan Adjustment and Central American Relief Act (NACARA), Section 202 of Public Law 105-100

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on certification. The director's decision is affirmed and the application is denied.

The record reflects that the applicant is a native and citizen of Nicaragua who was found to be ineligible to adjust his status to lawful permanent resident status pursuant to section 202 of Public Law 105-100 based on the discretion of the director.

The director concluded that the adverse factors in the applicant's case greatly outweighed the limited positive factors, therefore, he did not merit a favorable exercise of discretion in this matter. *Decision of the Director*, at 2, dated February 15, 2006.

The record does not include a response to the notice of certification.

The record includes, but is not limited to, the applicant's adjustment of status application and documents relating to the applicant's criminal history. The entire record was reviewed and considered in arriving at a decision on the appeal.

Adjustment of status is not merely based on statutory eligibility, but it is also a matter of discretion. *Jarecha v. INS*, 417 F.2d 220 (5th Cir. 1969) status, in pertinent part:

...The determination to grant permanent residence status under section 245 of the Immigration and Nationality Act, 8 U.S.C. 1255, lies entirely within the discretion of the Attorney General [Secretary]. An applicant who meets the objective prerequisites for adjustment of status is in no way entitled to that relief...

The question of whether to exercise favorable discretion involves a balancing of an alien's undesirability as a permanent resident with the social and humane considerations present to determine whether granting permanent residency is in the best interests of the country.

The applicant's favorable factors include his U.S. citizen son, stable employment, payment of taxes and a letter from the applicant's property owner related to his conduct.

In regard to the applicant's adverse factors, the record reflects that he was convicted of carrying a concealed firearm in relation to an arrest on September 17, 1989. He was ordered deported on October 20, 1989. The applicant was convicted of aggravated battery in relation to an arrest on September 11, 1992. This crime was particularly heinous in that the victim was three months pregnant and lost her baby due to the battery. *Complaint/Arrest Affidavit*, dated September 11, 1992. In addition, he was convicted of attempted burglary and criminal mischief in relation to an arrest on April 11, 1995. He was also convicted of two traffic offenses in relation to an arrest on May 12, 2003. The arrest report indicates that his license has been suspended nine times. *Complaint/Arrest Affidavit*, dated May 12, 2003.

The AAO finds that these numerous adverse factors outweigh the minimal favorable factors.

Therefore, the applicant's adjustment of status application was properly denied as a matter of discretion

ORDER: The director's decision is affirmed and the application is denied.