U.S. Department of Homeland Security
20 Mass, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LOS ANGELES DISTRICT OFFICE Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[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 waiver application was denied by the District Director, Los Angeles, CA. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded to the director for further action consistent with this decision.

The record reflects that the applicant is a native and citizen of Mexico. It appears the applicant was notified on two separate occasions that he required a waiver of inadmissibility. Inadmissibility was raised due to criminal convictions and for fraudulent use of a border crossing card in two requests for evidence. *Letter of District Director* (April 18, 2001); *Letter of District Director* (May 22, 2001). *See* Sections 212(a)(2)(A)(i) and 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i) and 1182(a)(6)(C)(i).

Review of the applicant's alien file ("A-file") reveals that U.S. Citizenship and Immigration Services (CIS) has identified to the applicant, and consolidated, three other A-files in addition to the A-file with the alien umber assigned to the present case. The evidence of inadmissibility appears to derive exclusively from the content of the three A-files that were consolidated into the present record. Review of the consolidated record by the AAO fails to establish that the evidence relied upon to make the inadmissibility determination relates to the applicant in the present case.

The record contains several items that evidence the applicant's identity. A certified copy of the applicant's birth certificate shows his full name to be [redacted] born on October 31, 1967, in Atzcapatzalco, Federal District, Mexico. *Birth Certificate* (registered December 7, 1967). His surname derives from that of his father [redacted] and of his mother [redacted] *Id.* The record also contains a copy of his marriage certificate, on which his name is listed as [redacted] *Certified Abstract of Confidential Marriage, No. C036302* (filed January 5, 1995, issued September 19, 1995). There is a photograph of the applicant in the record, submitted in connection with the Form I-130, *Petition for Alien Relative* (approved October 18, 1997). His signature and index fingerprint are affixed on the Form I-89, *I-551 or I-586 Card Data Collection Form* (executed April 18, 2001). Also relevant to this proceeding is a CIS agency system printout showing fingerprint investigation results, obtained in connection with a routine background check conducted by the Federal Bureau of Investigation (FBI). The results, dated August 28, 2003, show that the FBI found no fingerprints in its databank matching those of the applicant. Counsel has also updated the record with the results of an apparently independent request for the FBI to review its records against the applicant's fingerprints. *Letter of Linnette Tano Clark* (February 27, 2004). Attached to counsel's letter is a photocopy of the applicant's fingerprint card and a stamp, dated February 4, 2004 and apparently affixed by the FBI, stating, "No Arrest Record." *Id.*

The record also contains items from a consolidated A-file pertaining to [redacted] born October 31, 1967. Form I-213, *Record of Deportable Alien* (June 13, 1991). [redacted] place of birth is listed as San Pedro, Guanajuato, Mexico, and the record contains a photocopy of his Guanajuato driver's license. The narrative of the Form I-213 indicates that [redacted] was apprehended by U.S. Border Patrol (BP) attempting to evade inspection. *Id.* A final order of removal was issued against [redacted] on November 26, 1991. *Bag and Baggage Check Sheet* (October 7, 1992). A handwritten Routing and Transmittal Slip, dated January 7, 1993, states, "subject appears to have been deported." System information in the file indicates that there were no FBI fingerprint results on file with CIS for this alien on July 28, 2003; however, the file does contain a full set of fingerprints taken by BP on June 13, 1991. There is also a Polaroid photograph of [redacted] apparently taken by the BP on June 13, 1991. The individual in the Polaroid photograph, while the same as that on the [redacted] driver's license, does not appear to be the same person in the photographs

submitted by the applicant in connection with his I-130. The AAO cannot conclude that the records from this file pertain to the applicant. Although it does not appear that the district director relied upon these records in making a finding of inadmissibility, they remain in the A-file and part of the record.

Further items in the A-file, including evidence that the district director apparently relied upon to support a finding of inadmissibility based on fraud, apparently derives from a consolidated A-file pertaining to The items from this A-file include a photograph and right index fingerprint of affixed by an Immigration Inspector to a Form I-296, *Notice to Alien Ordered Removed/Departure Verification* (December 8, 1998). The form is also signed by The individual in the photograph of affixed to this form clearly bears no resemblance to the photograph of the applicant. The illegible signature of Gallegos further contains no similarities with that of the applicant. The plastic envelope attached to the file containing the fraudulently used border crossing card and Form I-443D, *Multiple Inspection Referral,* also contains the same photograph of and additional fingerprints affixed to the back of the form. There is a full set of fingerprints fo taken at the Del Rio, Texas port of entry. On this record, the AAO cannot conclude that the records related to fraudulent use of a border crossing card relate to the applicant.

The finding of inadmissibility based on criminal convictions appears to have been retracted by the district director, although it is not clear whether the applicant or his counsel were ever notified. *Letter to Applicant* (October 27, 2003) (handwritten note next to request for arrest records states, "not needed/not the applicant.") There is no evidence in the record connecting the applicant to criminal convictions other than driving violations, which do not appear to have been identified as grounds of inadmissibility.

The record appears to contain no evidence related to the applicant that supports a finding of inadmissibility. The AAO is not in a position to conduct an investigation of whether the consolidated records in the file conclusively do or do not pertain to the applicant. Therefore, the AAO finds it necessary to remand the present matter to the director for a new decision in the applicant's case. The AAO recommends that a careful review of the A-file's contents be undertaken in order to segregate items belonging each subject and associate them with the proper A-files. If the new decision rendered by the district director in the instant case is adverse to the applicant, the decision shall be certified to the AAO for review.

ORDER: The director's decision is withdrawn and the matter remanded to the director for further action consistent with the present decision.