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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: DALLAS, TX

Date:

APR 22 2008

IN RE:

Applicant:



APPLICATION:

Application to Register Permanent Residence or Adjust Status under Section 245 of the Immigration and Nationality Act

ON BEHALF OF APPLICANT:



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 Field Office Director, Dallas, Texas, denied the Form I-485, Application to Register Permanent Residence or Adjust Status and certified the decision to the Administrative Appeals Office (AAO). The field office director's decision will be withdrawn. The application will be granted.

The record reflects that the applicant is a 34-year-old native and citizen of Mexico. On February 18, 2004, the applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status on the basis of an approved Petition for Alien Relative filed on his behalf by his U.S. citizen spouse. The field office director denied the application in the exercise of discretion based on the applicant's conviction, in 2001, for Indecent Exposure.¹ On December 14, 2007, the matter was certified to the AAO.

The applicant timely submitted a brief in response to the certification in which he, through counsel, contends that the field office director abused her discretion in denying the application and in failing to appropriately articulate the grounds for the denial. The AAO agrees with the applicant.

The field office director's denial, in relevant part, consists of one paragraph stating that favorable discretion is unwarranted due to the nature of the applicant's crime involving a child. The denial does not evidence any balancing of the applicant's equities. It does not include a discussion of favorable and unfavorable factors, or any discretionary analysis. For that reason, the field office director's denial is withdrawn.

The record reflects that the applicant has been residing in the United States for nearly 20 years. He has been married, since 1996, to a U.S. citizen and has two U.S. citizen children. The applicant is well-employed, and owns his own home. The applicant and his wife jointly own and operate a small business. In 2001, the applicant was convicted of Indecent Exposure. The applicant was placed on 12 months of unsupervised probation and ordered to pay a fine. The applicant's record of arrest reveals that he was initially charged with Indecency with a Child, but that the charges were reduced at the State Attorney's request. There is no evidence of any other criminal activity in the applicant's record.

Upon a careful review of the record, the AAO finds that the applicant's 2001 conviction is outweighed by the favorable factors in this case. The AAO concludes that the applicant merits a favorable exercise of discretion. The Application to Register Permanent Residence or Adjust Status will therefore be granted.

ORDER: The field office director's denial is withdrawn. The application is granted.

¹ Texas Penal Code § 21.08 states that as "a person commits an offense [of indecent exposure] if he exposes his anus or any part of his genitals with the intent to arouse or gratify the sexual desire of any person, and he is reckless about whether another is present who will be offended or alarmed by his act." The crime is classified as a Class B misdemeanor, punishable by a maximum fine of \$2000 and imprisonment not to exceed 180 days, or both. The AAO notes that, unlike the indecent exposure statutes at issue in *Matter of H*, 7 I&N Dec. 301 (BIA 1956) and *Matter of Muller*, 11 I&N Dec. 268 (BIA 1965), the Texas statute includes a specific intent "to arouse or gratify" and can therefore be considered a crime involving moral turpitude rendering an alien inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I). The AAO finds, however, that the applicant is not inadmissible on account of his conviction because he fits within the petty offense exception in section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II).