U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. 3000
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: NEW YORK Date: MAR 20 2009

MSC 02 247 63660

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).

IN BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to submit the requested court disposition.

On appeal, counsel states that the arrests referred to by the director does not apply to the applicant. Counsel asserts that the applicant has no knowledge of the arrests that occurred in upstate New York.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. Section 245A(b)(1)(C) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(b)(1)(C); 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term actually served, if any; or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less, regardless of the term actually served. Under this exception, for purposes of 8 C.F.R. § 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

The FBI report, via a fingerprint analysis, dated February 27, 2004, reflects the applicant's criminal history in the state of New York as follows:

1. On July 1, 1988, the applicant was arrested under the alias [redacted] by the Drug Enforcement Task Force in Albany for criminal possession of a controlled substance in the 2nd degree and criminal possession of a controlled substance in the 3rd degree. The applicant was subsequently convicted of conspiracy.
2. On January 20, 1989, the applicant was arrested under the alias [redacted] by the Troy Police Department for criminal possession of a controlled substance in the 2nd degree. The applicant was subsequently convicted of criminal sale of a controlled substance in the 3rd degree.
3. On June 22, 1989, the applicant was received at the Downstate Correctional Facility in Fishkill for criminal sale of a controlled substance in the 3rd degree.

At the time of his LIFE interview, the applicant indicated that he had been arrested in 1998 and 2002.

On May 23, 2007, the director issued a Notice of Intent to Deny, which advised the applicant of the information obtained from the FBI report. The applicant was requested to submit the final court dispositions for all arrests including those from 1998 and 2002.

The applicant, in response, submitted:

- Court documentation reflecting that on July 29, 1995, the applicant was arrested for violating PL section 140.35, possession of burglary tools, and PL section 145.15, criminal tampering in the second degree. The applicant was subsequently charged with violating PL section 170.55, unlawfully using slugs in the second degree. On July 30, 1996, the case was dismissed. Docket no. [redacted]
- Court documentation reflecting that on October 8, 1998, the applicant pled guilty to violating VTL 509. 2, operating a motor vehicle without a license, a misdemeanor. The applicant was ordered to pay a fine. Docket no. [redacted]
- Court documentation reflecting that on December 8, 1996, the applicant was arrested for violating PL section 170.25, criminal possession of a forged instrument in the 2nd degree, and PL section 170.20, criminal possession of a forged instrument in the third degree. The applicant was subsequently charged with violating PL section 170.55, unlawfully using slugs in the second degree. On October 30,1997, the case was dismissed. Docket no. [redacted]
- Court documentation reflecting that on December 26, 2002, the applicant was arrested and subsequently charged with violating VTL 511.1, aggravated unlicensed operation of a motor vehicle in the third degree and VTL 509.1, unlicensed operation of a motor vehicle. On March 6, 2003, the case was dismissed. Docket no. [redacted]

The director, in denying the application, noted that the applicant had failed to address the arrests indicated on the FBI report and, therefore, he had failed to meet his burden of proof.

On appeal, counsel asserts that the arrests listed on the FBI report do not relate to the applicant.

Declarations by an applicant that he or she has not had a criminal record are subject to verification of facts by U.S. Citizenship and Immigration Services (USCIS). The applicant must agree to fully cooperate in the verification process. Failure to assist USCIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

The applicant has the burden to establish, with *affirmative evidence,* that the arrests listed on the FBI report were either dismissed or were in error. A mere statement made by counsel is not affirmative evidence and fails to meet the applicant's burden. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant is ineligible for adjustment to permanent resident status because he failed to provide the requested court documentation necessary for the adjudication of the application. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.