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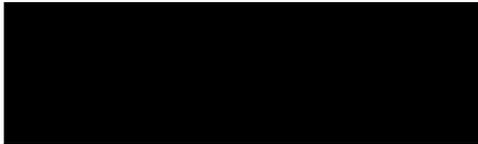
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
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FILE:



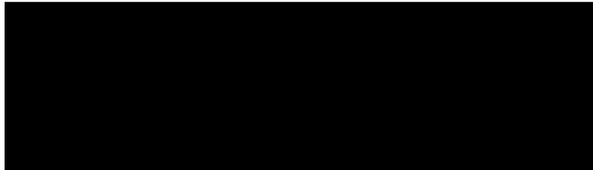
Office: SAN ANTONIO

Date:

MAR 29 2011

IN RE:

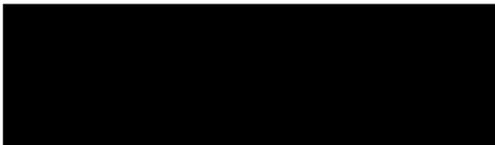
Applicant:



APPLICATION:

Application for Adjustment from Temporary to Permanent Resident Status under Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Form I-698, Application to Adjust from Temporary to Permanent Resident Status, was denied by the director of the San Antonio office. The application is before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The appeal will be sustained.

The director denied the I-698 application, finding that the applicant is ineligible to adjust status from temporary to permanent resident because he has failed to establish that he does not have disqualifying criminal convictions.

On appeal, counsel states that the applicant was admitted to the United States as a legal permanent resident (LPR) on April 15, 1992, and that the director was without authority to deny the I-698 application.¹ Counsel also asserts that the denial of the I-698 application was improper, because the applicant was not provided with an opportunity to rebut the derogatory information that formed the basis of the director's decision.²

The records of USCIS indicate that the Form I-687, application for status as a temporary resident, was approved on March 2, 1989. The applicant timely filed the Form I-698, application to adjust from temporary to permanent resident, on November 21, 1991. USCIS records indicate that on April 15, 1992, the director of the Los Angeles office approved the I-698 application for permanent resident status, with a class of admission of W16.³ On July 13, 2010, the director of the San Antonio office denied the I-698 application.

The record establishes that the I-698 application was approved, and the applicant received LPR status from USCIS as of April 15, 1992. As such, the director of the San Antonio office was without authority to issue the notice of decision denying the applicant's I-698 application. The director's notice of decision to deny the I-698 application is in error and is hereby withdrawn. Therefore, the applicant's appeal will be sustained.

¹ The record reveals that the applicant's FOIA request, number [REDACTED], was processed on November 2, 2010.

² Further, counsel asserts that (USCIS) would be equitably estopped from rendering a decision on the Form I-698 application, since a 20-year delay in adjudicating the Form I-698 application for adjustment from temporary to permanent residence constitutes an unlawful retroactive application of law to settled expectations. The AAO, like the Board of Immigration Appeals, is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of the United States Citizenship and Immigration Service (USCIS) from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See generally, Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Estoppel is an equitable form of relief available only through the courts. The jurisdiction of the AAO is limited to that authority specifically granted to it by the Secretary of the United States Department of Homeland Security (DHS). *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1 (f)(3)(E)(iii) (as in effect on February 28, 2003). Accordingly, the AAO has no authority to address counsel's equitable estoppel claim.

³ The record reveals that the applicant filed two I-90 Forms, Applications to Replace Permanent Resident Card, which were approved on August 21, 2003 and March 19, 2009, respectively.

The record reveals that on June 23, 1982, the applicant, under the name [REDACTED] was charged with violations of the California Penal Code (PC), *Assault to Commit Rape* and *Assault with a Deadly Weapon*. The disposition of these charges is not known. (San Gabriel Police Department, [REDACTED]). On August 31, 1982, using the name [REDACTED] the applicant was charged with violations of the California Penal Code, *Assault with Deadly Weapon*, *Battery* and *Failure to Appear*. The *Assault with Deadly Weapon* was reduced to *Battery*, and the applicant pleaded *nolo contendere* to the charge, and was sentenced to 24 months summary probation and 60 days in county jail. The disposition of the remaining charges is not known. (San Gabriel Police Department, [REDACTED]). On September 28, 1992, using the name [REDACTED] the applicant was charged with a violation of the California Penal Code, *Assault with Deadly Weapon*. The charge was subsequently dismissed. (San Gabriel Police Department, [REDACTED]). On February 17, 1983, using the name [REDACTED] the applicant was charged with violations of the California Penal Code, *Warr. Assault with Deadly Weapon* and *Battery on Person*. The disposition of these charges is not known. (Alhambra Police Department, [REDACTED]). On July 23, 1990, the applicant was charged with a violation of the California Penal Code, *Hit and Run Property Damage*. The disposition of this charge is not known. (El Monte Police Department, [REDACTED]). On May 21, 1994, the applicant was charged with a violation of the California Penal Code, *False ID to Peace Officer*. The disposition of this charge is not known. (West Covina Police Department, [REDACTED]). On September 7, 1999, the applicant was charged with a violation of the Texas Penal Code, *Failure to Identify Fugitive from Justice*. The disposition of this charge is not known. (Windcrest Police Department, [REDACTED]). The applicant may be removable on criminal grounds.

ORDER: The appeal is sustained.