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 Services

[redacted]

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Date: DEC 0 5 2012 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Applicant: [redacted]

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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form I-698, application to adjust status from temporary to permanent resident pursuant to section 245A of the Immigration and Nationality Act (Act), was denied by the director of the Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded.

On March 28, 2012, the director denied the I-698 application, finding that the applicant was ineligible for permanent resident status because he failed to provide a full court disposition to establish that he did not have a disqualifying criminal conviction.[1] The applicant has provided additional court disposition documents on appeal.[2]

An applicant who has been convicted of a felony in the United States is inadmissible and therefore 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).

The record contains court documents that reflect the following:

- On February 9, 1987, the applicant was arrested and charged with a violation of the Texas Penal Code, *aggravated assault causing severe bodily injury,* an offense which is a third degree felony. On February 10, 1987, the Grand Jury failed to find a bill of indictment against the applicant (also referred to in the record as being "No-Billed" by the Grand Jury). Also on that date the Grand Jury's finding was approved by the Court and the applicant was discharged from custody. District Court

The court disposition documents relating the applicant's 1987 arrest establish that the applicant does not have a disqualifying criminal conviction that renders him ineligible for adjustment from temporary to permanent resident status.

As the applicant overcame the single documentary deficiency stated by the director, the case should have been reopened at that point and fully adjudicated on its merits.

Accordingly, the case will be remanded for the purpose of a new decision addressing the above. In the event of an adverse decision by the director, the applicant will be permitted to file an appeal without a fee.

ORDER: The case is remanded for appropriate action consistent with the above.

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[1] The record reflects that court disposition documents relating the applicant's 1987 arrest were previously submitted into the record, reviewed and found to establish that the applicant does not have a disqualifying criminal conviction, at the time the applicant's temporary resident status was granted on July 18, 2005. An alien who has been convicted of a felony in the United States is ineligible for temporary resident status. 8 C.F.R. § 210.3(d)(3).

[2] The record reflects that the applicant's FOIA request, number was processed on August 24, 2012.