U.S. Department of Homeland Security
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Washington, D.C. 20529

U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: NATIONAL BENEFITS CENTER Date: AUG 24 2005

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).

ON BEHALF OF APPLICANT:

[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 application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, National Benefits Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application due to the applicant's criminal history in the United States.

On appeal, counsel puts forth a brief disputing the director's decision.

The regulation at 8 C.F.R. § 245a.18(a) states in part that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for adjustment to LPR status.

"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 such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term "felony," pursuant to 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 such alien actually served, if any, except 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 such alien actually served. 8 C.F.R. § 245a.1(p).

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (CIMT) (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of Immigration and Nationality Act (the Act).

The record reflects the applicant's criminal history in the State of California:

1. On June 26, 1993, the applicant was arrested by the Coalinga Police Department and subsequently charged with three counts of willful cruelty to a child, driving under the influence of alcohol and driving with .08 percent or more alcohol in the blood. On August 17, 1993, the applicant pled guilty to driving under the influence of alcohol, driving with .08 percent or more alcohol in the blood, and one count of willful cruelty to a child, all misdemeanors. Case no.

2. On July 26, 1995, the applicant was arrested by the King City Police Department for spousal abuse and by the Salinas Sheriff's Office for inflicting corporal injury upon a spouse/cohabitant. The final outcome is unknown, as the requested court disposition was not made available to the Citizenship and Immigration Services (CIS).

3. On May 21, 1997, the applicant was cited for disorderly conduct–drug and/or alcohol related, a misdemeanor. On June 18, 1997, the applicant was convicted of the offense. The applicant was sentenced to serve five days in jail, ordered to pay a fine, and placed on probation for three years. Case no

4. On October 5, 1997, the applicant was arrested by the King City Police Department for spousal abuse and by the Salinas Sheriff's Office for inflicting corporal injury upon a spouse/cohabitant, a misdemeanor, and dissuading a witness by force or threat, a felony. On October 22, 1997, the applicant was convicted of inflicting corporal injury upon a spouse/cohabitant. On November 25,

1997, the applicant was sentenced to serve 90 days in jail, and placed on probation for three years. The remaining offense was dismissed. Case no. [redacted]

5. On December 30, 1997, the applicant was arrested by the Salinas Sheriff's Office for inflicting corporal injury upon a spouse/cohabitant and dissuading a witness by force or threat. The final outcome is unknown, as the requested court disposition was not made available to the CIS.

6. On July 11, 1999, the applicant was arrested by the Salinas Sheriff's Office and the King City Police Department and subsequently charged with inflicting corporal injury upon a spouse/cohabitant, a felony. On August 18, 1999, the applicant was convicted in the Salinas Superior Court of the felony count. The applicant was sentenced to serve 150 days in the jail and placed on probation for three years. Case no. [redacted]

7. On September 14, 1999, the applicant was arrested by the Salinas Sheriff's Office for inflicting corporal injury upon a spouse/cohabitant. The final outcome is unknown, as the requested court disposition was not made available to the CIS.

On September 19, 2003, the applicant was requested to submit the court dispositions for the arrests above and for any other charges that may have occurred. The applicant, in response, submitted the court dispositions for the above arrests except for numbers two, five and seven. The applicant also submitted documentation reflecting the completion of three separate domestic violence sessions along with a letter from his probation officer indicating that the applicant had successfully terminated his felony probation.

On appeal, counsel argues that the applicant pled guilty to only one count of willful cruelty to a child not three as stipulated in the director's decision. The AAO agrees with counsel as the court disposition clearly reflects one conviction of willful cruelty to a child. However, the court disposition also reflects that the applicant pled guilty driving under the influence and driving with .08 percent or more alcohol in the blood.

For number six above, counsel argues that the State statute under which the applicant pled guilty can be viewed as either a felony or a misdemeanor for immigration purposes, and since he was sentenced to 150 days which is within the definition of a misdemeanor in 8C.F.R. § 245a.1(o) rather than a felony under 8 C.F.R. § 245a.1(p), his conviction should not be treated as a felony for immigration purposes.

The regulation at 8 C.F.R. § 245a.1(p) clearly states that a "felony" means a crime committed in the United States, punishable by imprisonment for a term of more than one year, *regardless of the term such alien actually served.* Additionally, section 18 of the California Penal Code states that every offense declared to be a felony is punishable by imprisonment in any of the state prisons for 16 months, or two or three years. In the instant case, the applicant was convicted under PC273.5(a) which is clearly designated as a felony and punishable by up to four years in prison, which meets the definition of a felony for immigration purposes. Thus, counsel's argument is without merit.

The applicant has the burden to establish, with affirmative evidence that the outstanding charges or arrests in numbers two, five and seven above were dismissed or were in error. The applicant has failed to meet this burden.

The applicant is statutorily ineligible for the benefit being sought due to his two felony and four misdemeanor convictions. 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a). The applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

In addition, inflicting corporal injury on a spouse/cohabitant is a base and depraved act and is classified as a CIMT. *Grageda v. INS*, 12 F.3d 919 (9th Cir. 1993). *See also Matter of Phong Nguyen Tran*, 21 I&N Dec. 291 (BIA 1996). The infliction of bodily harm upon a person with whom one has such a familial relationship

is an act of depravity that is contrary to accepted moral standards. Therefore, the applicant's convictions for these offenses render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Normally a waiver would be available for inadmissibility under this section, but as the applicant is statutorily ineligible for the benefit sought, no purpose would be served in filing a waiver of inadmissibility.

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