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**U.S. Citizenship  
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Services**

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FILE: MSC 02 247 60816

Office: HOUSTON Date:

**MAY 05 2008**

IN RE: Applicant:



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:



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. 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The district director denied the application, finding that the applicant was not an eligible alien, as defined by 8 C.F.R. §254a.10, in that he had been convicted of a crime involving moral turpitude.

On appeal, counsel for the applicant urges reconsideration and contends that the director's conclusions are erroneous. Specifically, counsel asserts that the applicant is in fact eligible, since the applicant was only convicted of one misdemeanor and thus is not barred under 8 C.F.R. § 245a.11(d)(1). Furthermore, counsel contends that the applicant's conviction for a simple misdemeanor assault is not a crime involving moral turpitude and is not destructive of the applicant's good moral character. Counsel submits a brief statement and additional documentary evidence in support of the appeal.<sup>1</sup>

An alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the Act. Section 1140(c)(2)(D)(i) of the LIFE Act.

An alien is inadmissible if he or she has been convicted of a crime involving moral turpitude (other than a purely political offense), or an attempt or conspiracy to commit such a crime. Section 212(a)(2)(A)(i)(1). Pursuant to 8 C.F.R. § 245a.18(c)(2), grounds of inadmissibility under this section of the Act (crimes involving moral turpitude) may *not* be waived

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. DeGeorge*, 341 U.S. 223, *reh'g denied*, 341 U.S. 956 (1951).

A review of the record reveals that on March 22, 2003, the applicant entered a plea of nolo contendere (no contest) to the charge of Aggravated Assault, a Class A misdemeanor, in the District Court of Harris County, Texas. (Case No. [REDACTED]). He was sentenced to seven months in jail and ordered to pay a fine of \$200.00.

Aggravated assault is a crime involving moral turpitude when the elements of the offense require a showing that the person acting recklessly consciously disregarded a substantial and unjustifiable risk, and such disregard constituted a gross deviation from the standard of care a reasonable person would exercise in the situation. *Pichardo v. INS*, 104 F.3d 756 ((5<sup>th</sup> Cir. 1997); *Matter of Chavez-Calderon*, 20 I&N Dec. 744 (BIA 1983). In this matter, counsel makes no attempt to address this issue, and instead merely claims

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<sup>1</sup> On Form I-290B, it is noted that counsel requested an additional 30 days in which to submit additional evidence in support of the appeal. On April 8, 2008, the AAO sent a fax to counsel. The fax advised counsel that no evidence or brief had been received in this matter and requested that counsel submit a copy of the brief and/or additional evidence, if in fact such evidence had been submitted, within five business days. As of the date of this decision, the AAO has received no response from counsel or the applicant.

that the offense happened over twenty-two years ago and this single incident does not destroy the applicant's moral character.

While the district director was correct in concluding that the applicant had been convicted of a crime involving moral turpitude, the director did not consider whether the applicant was still considered to be inadmissible under the following exceptions contained at section 212(a)(2)(A)(ii) of the Act:

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

In this case, the applicant was born on March 10, 1959 and convicted of a crime involving moral turpitude at the age of 44 on March 23, 2003. Therefore, the exception contained at section 212(a)(2)(A)(ii)(I) of the Act does not apply to the applicant as he was over 18 years of age at the time of his conviction. Moreover, a review of the Texas Penal Code at section 12.21 reveals that the applicant's conviction for misdemeanor aggravated assault is punishable by fine not exceeding \$4,000 or by imprisonment not exceeding one year. In this matter, while the maximum penalty possible does not exceed one year, the applicant was sentenced to seven months in prison. Therefore, the exception contained at section 212(a)(2)(A)(ii)(II) of the Act likewise does not apply to the applicant.

Since the applicant has been convicted of a crime involving moral turpitude, and has not met either of the exceptions contained at section 212(a)(2)(A)(ii) of the Act, 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.