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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] Office: SAN DIEGO Date: **MAY 14 2009**
MSC 01 283 60076

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:



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, San Diego, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant was found to be inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

On appeal, the applicant indicated that he was never given the opportunity to rebut the adverse information as he never received the Notice of Intent to Deny. The applicant asserts that in his statement on August 20, 2003, he admitted to having in his possession less than "a gram" of crystal rock cocaine. The applicant provided an additional printout of his criminal history from the California Department of Justice.

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).

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 Title 21). Section 212(a)(2)(A)(i)(II) of the Act.

Along with his Form I-687 and LIFE applications, the applicant submitted court dispositions and Form DL-280s from the California Department of Motor Vehicles, which reflect several infraction convictions in [REDACTED]

The record reflects that on July 7, 1990, the applicant was arrested in Oceanside, California for driving under the influence, a violation of section 23152(a) VC; driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC; driving while license is suspended or revoked, a violation of section 14601.1(a) VC; endangering a child, a violation of section 273(a)(2); proof of financial responsibility, a violation of section 16028(a)VC; and child passenger seat restraints a violation of section 27360(a) VC. The applicant was convicted of violating section 23152(a) VC. The applicant was sentenced to serve 45 days in jail, ordered to pay a fine and placed on probation for three years. [REDACTED]

The record also reflects that on January 29, 1993, the applicant was arrested by the Sheriff's Office in San Diego, California for possession of a controlled substance.

On January 30, 2003, a Form I-72 was issued requesting the applicant to submit certified court disposition for *all* arrests including his arrest on January 29, 1993. The applicant, in response, submitted a report dated March 27, 2003, from the California Department of Justice, which reflects that the applicant was arrested on January 29, 1993, for violating section 11377(a) HS, possession of a controlled substance. On March 1, 1993, the applicant was convicted of driving under the influence, a violation of section 23152(a) VC, a misdemeanor. The applicant was sentenced to serve 70 days in jail, ordered to pay a fine and was placed on probation for five years. The remaining charges, possession of a controlled substance, use/under the influence of a controlled substance and driving with .08 percent or more alcohol in the blood, were dismissed. [REDACTED] The applicant also submitted court documentation from the San Diego Superior Court, North County Division, which reflects that the court records for violating section 23152(a) VC, in [REDACTED] had been destroyed.

At the time of his LIFE interview on August 20, 2003, the applicant admitted in a sworn statement that he was arrested on January 29, 1993 for possession of a controlled substance – crystal rock cocaine. The applicant also informed the interviewing officer that he had driving under the influences offenses in 1989 and 1993 in San Diego, California.

On August 25, 2003, a Notice of Intent to Deny was issued, which advised the applicant of his inadmissibility under section 212(a)(I)(A)(i)(II) of the Act due to his drug admission. The applicant was given 30 days in which to submit a rebuttal. The applicant, however, failed to respond to the notice.

On appeal, the applicant asserts that he never received the Notice of Intent to Deny. The record reflects that the notice was sent to the applicant's address of record which he still maintains on appeal. The notice was not returned by the post office as undeliverable or unclaimed. The applicant's alleged failure to receive said notice was not due to Service error as the notice was properly served on the applicant by sending it to his address of record in compliance with 8 C.F.R. § 103.5a(a)(1).

The applicant asserts that the amount of crystal rock cocaine in his possession was less than a gram. There is no waiver available to an alien inadmissible under section 212(a)((2)(A)(i)(I) of the Act except for a single offense of simple possession of thirty grams or less of marijuana. See section 245A(d)(2)(B)(ii) of the Act. In the instant case, the applicant admitted to possession of crystal rock cocaine and not marijuana. As the applicant has admitted to the elements of the crime he is inadmissible under section 212(a)(I)(A)(i)(II) of Act.

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 is ineligible for the benefit being sought as he has failed to provide certified court disposition for his violations on July 7, 1990, necessary for the adjudication of the application.

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she is admissible to the United States under the provisions of section 245A(d) of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.12(e). The applicant has failed to meet this burden.

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