



U.S. Citizenship
and Immigration
Services

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[Redacted]

JUN 8 2004

FILE: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed 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, Director
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Director, Western Service Center, is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had been convicted of two felonies and was statutorily ineligible to adjust status under 8 C.F.R § 245a.3(c)(1).

On appeal, the applicant states that he has never used, sold, or possessed drugs in his life. The applicant asserts that he pleaded guilty to criminal charges of drug possession and distribution because "...it was an easy way out in the court."

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(c)(1).

"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. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"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 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 a crime involving moral turpitude (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 the Immigration and Nationality Act (INA), formerly section 212(a)(9) of the INA.

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. De George*, 341 U.S. 223, *reh'g denied*, 341 U.S. 956 (1951).

An alien is excludable 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 102 of the Controlled Substances Act, 21 U.S.C. § 802). Section 212(a)(2)(A)(i)(II) of the INA, formerly section 212(a)(23) of the INA. An alien is also excludable if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the INA, formerly section 212(a)(23) of the INA.

The record reveals that the applicant was convicted of the following felony offenses in California Superior Court:

- A conviction for a violation of section 11350 of the California Health and Safety Code, Possession of a Narcotic Controlled Substance, on July 9, 1987; and,
- A conviction for a violation of section 11351 of the California Health and Safety Code, Possession of a Narcotic Controlled Substance for Sale on July 9, 1987.

Expungement of drug related convictions will not eliminate the convictions as a bar to legalization eligibility. *See Matter of Ozkok*, 19 I. & N. Dec. 546 (BIA 1988); *Matter of A F*, 8 I. & N. Dec. 429 (BIA, A.G. 1959). Furthermore, any pardon granted by the President of the United States or by the governor of any state would likewise be ineffective in overcoming the applicant's inadmissibility under section 212(a)(2)(A)(i)(II). *See Matter of Lindner*, 15 I. & N. Dec. 170, 171 (BIA 1975); *Matter of Lee*, 12 I. & N. Dec. 335, 337 (BIA 1967); *Matter of Yuen*, 12 I. & N. Dec. 325, 327 (BIA 1967).

The applicant is ineligible for adjustment to permanent resident status because of his two felony convictions. 8 C.F.R. § 245a.3(c)(1). In addition, he is inadmissible under Section 212(a)(2)(A)(i)(II) of the INA. Within the legalization program, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States. Furthermore, there is no waiver available to an alien excludable under section 212(a)(2)(A)(i)(I), section 212(a)(2)(A)(i)(II), or section 212(a)(2)(C) of the INA except for a single offense of simple possession of thirty grams or less of marijuana. *See* section 245A(d)(2)(B)(ii) of the INA.

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