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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date: NOV 24 2008

XST 88 261 2021

IN RE:

Applicant:

[REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 210 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1160.

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office on your appeal. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. You are not entitled to file a motion to reopen or reconsider your case.

John F. Grissom, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Los Angeles and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding the applicant ineligible for temporary residence because the applicant was convicted of two felony drug offenses in Orange County, California, in 1987.

The applicant is represented by counsel on appeal. Counsel does not deny the validity of the two felony drug convictions. Nonetheless, counsel argues that the applicant's 1987 convictions predate the 1989 amendments to the 1986 Immigration Reform and Control Act (IRCA) disqualifying applicants from temporary resident status on account of one felony or three misdemeanor convictions. 8 U.S.C. § 1160(a)(3)(B); 8 C.F.R. § 210.4(d)(2)(iii).

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 245a.2(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 (the Act), 8 U.S.C. § 1182(a)(A)(i)(I).

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); *Navarro-Lopez v. Gonzales*, 503 F.3d 1063, 1069 (9th Cir. 2007) (*en banc*).

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, 8 U.S.C. § 1182(a)(2)(A)(i)(II).

The record before the AAO reveals the following criminal record:

- On August 17, 1987, pursuant to a trial by jury, the applicant and a second defendant were convicted of one count of violating section [REDACTED] of the California Penal Code, *Conspiracy to Offer for Sale/Sell Heroin*. The applicant and the second defendant were also convicted of one count of violating section [REDACTED] of the California Health and Safety Code, *Offer to Sell/Sale/Transportation of Heroin*. Docket # [REDACTED]

The conviction document also records that the jury found it to be true that the applicant “offered to sell or sold one half ounce or more of a substance containing heroin, as alleged in Count 2 of the Information” (charging document). Both convictions are considered felony offenses under California state law. The applicant was sentenced to one year in jail and three years probation.

The AAO concludes that the applicant has been convicted of two felony offenses for possession of narcotics/controlled substance for sale, and is consequently, inadmissible under section 212(a)(2)(A)(i)(II) of the Act. The applicant’s argument that his convictions predate the amendments to IRCA disqualifying him from temporary resident status is without merit. Congress has provided no disclaimer or waiver for drug trafficking offenses that predate any amendments to IRCA, particularly for serious drug trafficking offenses. The AAO affirms the director’s determination that the applicant is ineligible for adjustment of status due to his felony convictions.

An applicant inadmissible under 8 U.S.C. § 1182(a)(2)(A)(i)(II) may be granted a waiver of inadmissibility if his conviction was for simple possession of 30 grams or less of marijuana and he can establish that denial of his admission would result in extreme hardship to his United States citizen or lawful permanent resident spouse, parent, or child. 8 U.S.C. § 1182(h). This exception is not available to the applicant because his drug convictions included conspiracy to sell and trafficking in heroin.

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 210(c) of the Act and is otherwise eligible for adjustment of status under this section. 8 C.F.R. § 210.3(b)(1). Based on the evidence of record, the applicant has failed to establish that he is eligible for adjustment to temporary resident status, and that he is admissible to the United States.

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