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U.S. Citizenship  
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NOV 04 2004

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under 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, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The director denied the application because the applicant had seemingly been convicted of a crime involving moral turpitude, and possibly three misdemeanors as well.

On appeal, the applicant clarifies his conviction record, and stresses that he is nevertheless eligible for permanent residence.

The applicant appears to be represented; however, no Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted. Therefore, this decision will be sent to the applicant only.

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).

The director indicated that the applicant was convicted of Assault With Deadly Weapon or Great Bodily Injury Force; Not Firearm, and Fighting in Public Place, on July 12, 1983. However, the applicant pled guilty only to the second count (fighting), and the first count (assault) was dismissed. Thus, this resulted in only one misdemeanor conviction.

The director also noted that the applicant had been arrested for Assault With Deadly Weapon or Great Bodily Injury Force, and Sexual Penetration Foreign Object With Force, on September 11, 1986. Although another defendant in that case pled guilty to at least one charge, the charges against the applicant were dismissed.

Earlier in this proceeding, the applicant established that another charge, Grand Theft Property, on June 4, 1985, did not result in a conviction.

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 Act, formerly section 212(a)(9) of the Act.

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).

The applicant indicates that his one conviction, for fighting, does not relate to a crime involving moral turpitude. He demonstrates that, even if it did, he would not be inadmissible because, pursuant to section 212(a)(2)(A)(ii)(II) of the Act, the exception clause regarding inadmissibility on criminal grounds applies because the maximum penalty possible for the crime did not exceed imprisonment for one year, and the applicant was not sentenced to imprisonment in excess of six months. The applicant is correct; he is not inadmissible.

The basis for termination has been overcome, and the appeal may be sustained on that issue. However, the applicant may not be granted adjustment to permanent residence because he is no longer a lawful temporary resident. Pursuant to 8 C.F.R. § 245a.3(b), an alien who has been lawfully admitted for temporary residence, *such status not having been terminated*, may apply for adjustment to permanent residence. The applicant's temporary resident status was terminated at the same time as his application for permanent residence was denied. He did not appeal that termination action. Therefore, he no longer remains in lawful temporary resident status, and has no status from which he can adjust to lawful permanent residence.

**ORDER:** The appeal is sustained.