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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: MIAMI Date: JUN 15 2004

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, Southern Service Center is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director terminated the applicant's status because the applicant had not been eligible for temporary residence due to his criminal record.

On appeal, prior counsel asserted the applicant's convictions were not for crimes of moral turpitude, but rather were for misdemeanor sexual assaults. He pointed out the applicant was granted a judicial recommendation against deportation. Current counsel, in a related proceeding, asserted that once a judicial recommendation against deportation is issued, the conviction cannot be used as a ground of inadmissibility.

The status of an alien admitted for temporary residence under section 245A of the Act may be terminated if he was not eligible for that status at the time it was granted. *See* section 245A(b)(2)(A) of the Act.

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. *See* 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).

On May 18, 1982 the applicant was charged with four counts each of unlawful sexual contact and sexual assault on a child, in violation of sections 18-3-404 and 18-3-405 of the Colorado Revised Statutes, respectively. He pled no contest to two counts of third degree sexual assault, a misdemeanor.

In addition, the applicant was acquitted of an April 24, 1984 charge of sexual assault on a child. An arrest in July 1990 for battery resulted in a dismissal, and a December 1991 charge of armed burglary was *nolle prossed*. Finally, a July 1995 shoplifting charge was dismissed.

In spite of the two misdemeanor convictions, the director granted the applicant temporary resident status. He then concluded the applicant had not been eligible for such status, and commenced termination proceedings.

Prior counsel argued the convictions for sexual assault do not relate to crimes involving moral turpitude. He did not provide any documentation, or cite any case law, in support of such conclusion. Nor has current counsel. Furthermore, the Board of Immigration Appeals, in its July 26, 1988 decision regarding the applicant's appeal of a deportation order, clearly stated that a conviction for sexual assault in the third degree under section 18-3-404(1)(a) of the Colorado Revised Statutes is a crime involving moral turpitude, and cited numerous precedent decisions in support of such finding. The Administrative Appeals Office concurs with this determination.

Prior counsel also argued that, under Colorado law, because the records of the convictions were sealed, the convictions "shall be deemed never to have occurred." However, under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Immigration and Nationality Act, no effect is to be given, in immigration proceedings, to a state action which purports to expunge, dismiss, cancel, vacate,

discharge, or otherwise remove a guilty plea or other record of quilt or conviction for immigration purposes. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

Counsel points out that the applicant acquired a Judicial Recommendation Against Deportation subsequent to his convictions, and asserts that these convictions therefore can no longer be considered in this proceeding. The Judicial Recommendation Against Deportation was made with reference to the applicant's deportation case, and is not binding in this benefit proceeding. Even if it were to relate to this proceeding, pursuant to *Matter of Roldan, supra,* the applicant would remain convicted for immigration purposes.

Although not addressed by the center director, another reason for termination of temporary residence exists in this case. Temporary resident status may be terminated if an alien fails to file for adjustment from temporary resident to permanent resident on Form I-698 within 43 months after the date he was granted status as a temporary resident. *See* 8 C.F.R. § 245a.2(u)(1)(iv). The applicant was granted temporary residence on August 23, 1989, and never filed Form I-698 for adjustment to permanent residence.

The applicant was not eligible for temporary residence due to his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. No waiver is available to an alien who is inadmissible under that section. *See* section 245A(d)(2)(B)(ii) of the Act.

ORDER: The appeal is dismissed. The applicant's temporary resident status is terminated. This decision constitutes a final notice of ineligibility.