

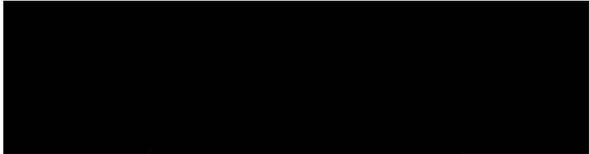
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: DEC 22 2006
XPS 89 361 0662

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident 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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Director, Texas Service Center, and 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 a felony, and he was therefore ineligible for adjustment from temporary to permanent resident status.

On appeal, the applicant asserts that the exception under section 212(a)(2)(A)(ii) of the Immigration and Nationality Act (the Act) applies in his case as he was under the age of 18 when he committed the crime.

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 (CIMT) (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).

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 inadmissible if he has been convicted of two or more offenses (other than purely political offense), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were five years or more. Section 212(a)(2)(B) of the Act.

The record reveals that on September 28, 1992, the applicant was convicted in the Harris County District Court in Texas of 1st degree burglary of habitation with intent to commit theft, a felony. The applicant was sentenced to five years of confinement. Case no. [REDACTED]

The record also reveals that on April 30, 2005, the applicant was arrested for assault on family member and interference with emergency telephone a misdemeanor. On August 18, 2005, the adjudication of guilt was deferred, and the applicant was placed on probation for 18 months. The remaining offense was dismissed. Case no. [REDACTED]

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The applicant pled guilty to the assault charge and the judge ordered some form of punishment to the charge above. Therefore, the applicant has been "convicted" of this offense for immigration purposes.

On appeal, the applicant asserts that he is eligible for the exception at section 212(a)(2)(A)(ii) of the Act. The director, however, did not find the applicant inadmissible due to his conviction of a crime involving moral turpitude. His decision to deny the application was based on the fact that the applicant had been convicted of a felony.

Section 212(a)(2)(A)(ii) of the Act provides for an exception to inadmissibility of an alien convicted of only one crime of moral turpitude if:

(I) the crime was committed when the alien was under 18 years of age, *and* the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years *before* the date of application for a visa or other documentation and *the date of application for admission to the United States, or*

(II) the *maximum* penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was ultimately executed).

(Emphasis added).

Although the applicant was under 18 years of age at the time the crime was committed, said crime did not occur more than 5 years before the date of application for admission to the United States (Form I-698 was filed in August 1989) and the maximum penalty possible for the crime exceeded one year. Accordingly, the applicant does not qualify under either exception.

Burglary is considered a crime involving moral turpitude only when it is established that the offense was committed **with the intent to commit a crime involving moral turpitude**, *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982). The court disposition provided clearly indicates that intent was known and, therefore, the AAO finds the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for this offense.

The applicant is ineligible for adjustment to permanent resident status because of his felony conviction. 8 C.F.R. § 245a.3(c)(1). The applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for his burglary conviction. The applicant is also inadmissible due to his multiple criminal convictions for which the aggregate sentence to confinement was five years. Section 212(a)(2)(B) of the Act. No waiver of such ineligibility is available.

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