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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 06 2007
XBA 89 015 03118

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: 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. P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center, remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO), and denied again by the Director, California Service Center. The matter is now before the AAO on appeal. The appeal will be dismissed.

The director initially denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on adverse information acquired by the Legacy Immigration and Naturalization Service (INS) relating to the applicant's claim of employment for [REDACTED]

On appeal, from the initial denial, the applicant reaffirmed the veracity of his employment claim.

The director, in his subsequent decision, concluded that the applicant had been convicted of a felony and was inadmissible under sections 212(a)(2)(A)(i)(I) and (II) of the Immigration and Nationality Act (the Act).

On appeal, the applicant does not address the director's subsequent Notice of Decision. He merely submits employment documentation establishing employment subsequent to the twelve-month eligibility period ending May 1, 1986.

The regulation at 8 C.F.R. § 210.3(d)(3) states in part that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for temporary resident status.

"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 the term "felony," pursuant to 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).

"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. 8 C.F.R. § 245a.1(p).

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 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) 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. Section 212(a)(2)(A)(i)(I) 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 record reflects the applicant's criminal history in the state of California as follows:

1. On December 1, 1980, the applicant was arrested under the alias, [REDACTED] by the Sheriff's Office in Merced for violating section 217 PC, assault with intent to murder. On December 22, 1980, the applicant was convicted of violating section 245(a) PC, assault with a deadly weapon, a felony. On January 19, 1981, the applicant was sentenced to serve 12 months in jail and placed on probation for three years. Case no. [REDACTED]
2. On January 19, 1988, the applicant was arrested under the alias [REDACTED] by the Bakersfield Police Department for violating section 11350 H&S, possession of a narcotic controlled substance; section 496 PC, receiving known stolen property; section 12025 PC, carrying a concealed weapon in vehicle; and section 12031 PC, carrying a loaded firearm in a public place. On March 21, 1988, the applicant was convicted of violating section 11377 H&S, a misdemeanor under section 17 PC, possession of certain controlled substance. Imposition of sentence was suspended for three years and the applicant was sentenced to serve 94 days in jail. Case no. [REDACTED]

The applicant is ineligible for the benefit being sought due to his felony conviction. 8 C.F.R. § 210.3(d)(3). Within the legalization program, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States. Assault with a deadly weapon is a crime involving moral turpitude. *Matter of O-*, 3 I&N Dec. 193 (BIA 1948). Therefore, the applicant's conviction for this offense renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Because the applicant was convicted of a crime involving a controlled substance, the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act. There is no waiver available to an alien inadmissible under sections 212(a)(2)(A)(i)(I) and (II) of the Act except for a single offense of simple possession of thirty grams or less of marijuana. See section 210(c)(2)(B)(ii) of the Act.

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. 8 C.F.R. § 210.3(b)(1). The applicant has failed to meet this burden.

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