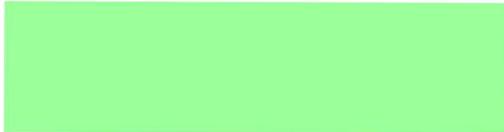


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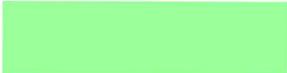
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W. MS 2090  
Washington, DC 20529-2090

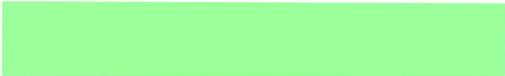


U.S. Citizenship  
and Immigration  
Services



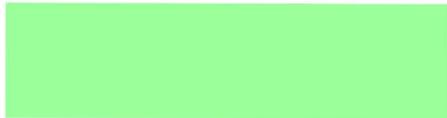
Date: **JUL 23 2013** Office: HOUSTON

FILE: 

IN RE: Applicant: 

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Houston, Texas, terminated the applicant's temporary resident status and the matter is now before the Administrative Appeals Office (AAO) on certification. The director's decision will be affirmed.

The applicant is a native and citizen of Mexico. On May 31, 1988, the applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act or INA), 8 U.S.C. § 1225a. Court records reveal that on March 24, 1987, the applicant had pled guilty to a violation of the Texas Penal Code (T.P.C.), *burglary of a habitation with the intent to commit theft*, a felony, and the court deferred adjudication of guilt and placed the applicant on probation for seven years.<sup>1</sup> On April 11, 1989, the director denied the application for temporary residence, finding the applicant was not eligible for temporary residence based upon the applicant's felony conviction. On May 18, 1993, the Legalization Appeals Unit (LAU), predecessor of the AAO, determined that, although the applicant had pled guilty to felony burglary, because the applicant's adjudication of guilt was deferred the applicant had not been "convicted", pursuant to *Matter of Ozkok*, 19 I&N Dec. 546, 1988 WL 235459 (BIA 1988).<sup>2</sup> The AAO therefore remanded the case for a determination of whether the applicant had established that he entered the United

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<sup>1</sup> The Texas deferred adjudication procedure is found in Texas Code of Criminal Procedure Article 42.12 § 5.

<sup>2</sup> In *Matter of Ozkok*, 19 I&N Dec. 546, 1988 WL 235459 (BIA 1988), the BIA revised the standard for determining whether a state conviction was to be considered a "conviction" for purposes of immigration law, and created the following standard:

Where adjudication of guilt has been withheld, however, further examination of the specific procedure used and the state authority under which the court acted will be necessary. As a general rule, a conviction will be found for immigration purposes where all of the following elements are present:

- (1) a judge or jury has found the alien guilty or he has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilty;
- (2) the judge has ordered some form of punishment, penalty, or restraint on the person's liberty to be imposed (including but not limited to incarceration, probation, a fine or restitution, or community-based sanctions such as a rehabilitation program, a work-release or study-release program, revocation or suspension of a driver's license, deprivation of nonessential activities or privileges, or community service); and
- (3) a judgment or adjudication of guilt may be entered if the person violates the terms of his probation or fails to comply with the requirements of the court's order, without availability of further proceedings regarding the person's guilt or innocence of the original charge.

*Id.* at 551-52.

The LAU found that "the third prong of the *Ozkok* test does not apply to the applicant because under the Texas procedure, if the accused violates the terms of his or her probation, the trial court has discretion to hold further proceedings on the issue of guilt before entering a finding of guilt and a judgment." Therefore the LAU found that the applicant had not been "convicted" pursuant to the standard set forth in *Ozkok*.

States on or before January 1, 1982, and resided here in an unlawful status for the duration of the requisite statutory period.

On September 30, 1996, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) was enacted; it became effective on 1 April 1997. Section 322(a) of IIRIRA defined the term "conviction" and amended § 101(a) of the INA, 8 U.S.C. 1101(a). Section 322(a), codified at 8 U.S.C. § 1101(a)(48)(A), states that 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.

On November 2, 2005, the Form I-687, application for status as a temporary resident, was approved. On August 27, 2012, the director terminated the temporary resident status of the applicant, finding the applicant to be ineligible for temporary residence based upon the applicant's felony conviction, which the director found constitutes a crime involving moral turpitude (CIMT), an additional basis of ineligibility. On February 25, 2013, the AAO issued a notice of certification to the applicant pursuant to 8 C.F.R. § 245a.2(r).

On appeal, counsel for the applicant asserts that the termination of the applicant's temporary resident status was in error because the applicant's "award of deferred adjudication did not constitute a conviction for immigration purposes." Counsel therefore denies that the applicant has a disqualifying conviction for immigration purposes. Counsel cites the decision in *Martinez-Montoya v. INS*, 904 F.2d 1018 (5<sup>th</sup> Cir. 1990) in support of his position.

The record reflects that the applicant requested a copy of the record of proceedings and that his request was processed more than thirty days prior to the issuance of this decision.<sup>3</sup> The applicant has not submitted any further documentary evidence on appeal. The AAO has considered counsel's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>4</sup>

The temporary resident status of an alien may be terminated upon the determination that the alien was ineligible for temporary residence. Section 245A(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(b)(2)(A), and 8 C.F.R. § 245a.2(u)(i).

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and

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<sup>3</sup> The record reflects that the applicant's FOIA request, number [REDACTED] was processed on December 6, 2012. The record also reflects that the applicant's FOIA request, number [REDACTED] was processed on December 6, 1993. The record further reflects that the applicant's FOIA request, number [REDACTED] was processed on July 10, 1989.

<sup>4</sup>The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to temporary resident status. 8 C.F.R. § 245a.2(c)(1); section 245A(a)(4)(B) of the INA.

"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).

In addition, an applicant is inadmissible, and therefore ineligible for temporary resident status, 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 (Act), as amended, 8 U.S.C. § 1182(a)(2)(A)(i)(I).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence that he has no disqualifying criminal convictions, and is thus otherwise admissible to the United States. A review of the decision reveals that the applicant has failed to meet this burden because of his felony conviction.

As stated above, the court records reveal that on March 24, 1987, the applicant pleaded guilty to a violation of the Texas Penal Code (T.P.C.), *burglary of a habitation with the intent to commit theft*, a felony. Although the record of conviction does not indicate the statutory provision under which the applicant was convicted, the offense of burglary under Texas law is defined in section 30.02 T.P.C.<sup>5</sup> The court deferred adjudication of guilt and placed the applicant on probation for seven

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<sup>5</sup> At the time of the applicant's conviction, Tex.Penal Code Ann., tit. 7, Sec. 30.02 (Vernon), provided in pertinent part:

- (a) A person commits an offense [of burglary] if, without the effective consent of the owner, he:
  - (1) enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony or theft; or
  - (2) remains concealed, with intent to commit a felony or theft in a building or habitation; or

years.<sup>6</sup> On May 14, 1990, the applicant's deferred adjudication was terminated. (338<sup>th</sup> District Court of Harris County, Texas, [REDACTED] For the reasons discussed below, we find the petitioner's guilty plea is a conviction for immigration purposes, and renders the applicant admissible to the United States and, therefore, ineligible for temporary resident status.

This matter falls under the jurisdiction of the United States Court of Appeals for the Fifth Circuit, where the controlling precedent decision is *Moosa v. I.N.S.*, 171 F.3d 994, 1006-10 (5<sup>th</sup> Cir. 1999). The majority in *Moosa* held that the alien's 1990 guilty plea under the Texas deferred adjudication statute is a conviction for immigration purposes under section 322(a), codified at 8 U.S.C. § 1101(a)(48), where the alien pled guilty, and the court imposed punishment or a restraint on liberty, in that case in the form of time served in jail on work release, the requirement that the alien report to a probation officer, and attendance at counseling. 171 F.3d at 1005-1006. See also *Matter of Punu*, Int. Dec. 3364 (BIA 1998) (1993 Texas deferred adjudication meets the definition of 8 U.S.C. § 1101(a)(48)(A) which definition superceded that of *Matter of Ozkok*). The court noted that the clear language of IIRIRA at section 322(c), results in the retroactive application of the new definition of "conviction." *Id.* at 1007. Section 322(c) states: "EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to convictions and sentences entered *before*, on, or after the date of the enactment of this Act". (Emphasis added.)

On appeal, counsel asserts the director incorrectly applied the precedent of the fifth circuit concerning the definition of "conviction" in finding the applicant's deferred adjudication a "conviction." Counsel does not discuss the decision in *Moosa*. Instead, counsel asserts that the controlling precedent is *Martinez-Montoya V. INS*, 904 F.2d 1018 (5<sup>th</sup> Cir. 1990). In *Martinez-Montoya* the court held that the applicant's deferred adjudication did not fall within definition of "conviction" for immigration purposes as promulgated by the Board of Immigration Appeals (BIA) in *Matter of Ozkok*, 19 I&N Dec. 546 (BIA 1988).<sup>7</sup> However, the court's holding in *Martinez-Montoya* was superseded by the enactment of IIRIRA, effective April 1, 1997, where, as

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- (3) enters a building or habitation and commits or attempts to commit a felony or theft.
  - (b) For purposes of this section, "enter" means to intrude:
    - (1) any part of the body; or
    - (2) any physical object connected with the body.
  - (c) Except as provided in Subsection (d) of this section, an offense under this section is a felony of the second degree.
  - (d) An offense under this section is a felony of the first degree if:
    - (1) the premises are a habitation; or
    - (2) any party to the offense is armed with explosives or a deadly weapon; or
    - (3) any party to the offense injures or attempts to injure anyone in effecting entry or while in the building or in immediate flight from the building.

<sup>6</sup> As stated above, the Texas deferred adjudication procedure is found in Texas Code of Criminal Procedure Article 42.12 § 5.

<sup>7</sup> The court found that the applicant's deferred adjudication did not constitute a "conviction," pursuant to *Matter of Ozkok*, since the Texas deferred adjudication procedure gives the trial court discretion to hold further proceedings on the issue of guilt before entering a finding of guilt and judgment, if an accused violated the terms of probation.

discussed above, Congress broadened the scope of the definition of “conviction” beyond that adopted by the BIA in *Matter of Ozkok*, supra. IIRIRA § 322(a), 8 U.S.C. § 1101(a)(48)(A).<sup>8</sup>

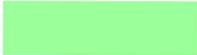
Counsel additionally observes that a court must apply the law in effect at time of rendering the decision and that there is a presumption against retroactive legislation that is deeply rooted in our jurisprudence, citing, generally, *Landgraf v. USI Film Prods.*, 511 U.S. 244, 264, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994). The Supreme Court has stated, however, that the principle of applying the law in effect at the time of the decision does not conflict with the presumption against retroactivity when the statute in question is unambiguous. *Landgraf*, 511 U.S. at 273. As stated above, the court in *Moosa* found that the plain language of § 322(c) leaves no doubt that Congress intended for the definition in § 322(a) to be applied retroactively, as Congress could not have more clearly expressed this intent than through its statement that § 322(a) was to apply to convictions entered *before* the date of IIRIRA's enactment. *Moosa*, 171 F.3d at 1007.

Finally, although not mentioning the *Moosa* decision, counsel cites the case of *INS v. St. Cyr*, 533 U.S. 289, 121 S.Ct. 2271 (2001) as undercutting the *Moosa* court's holding that the clear language of IIRIRA at section 322(c), results in the retroactive application of the definition of “conviction” at section 322(a). The court in *St. Cyr* found that the provisions of a different section of IIRIRA, § 304(b), eliminating the eligibility for discretionary relief from deportation under INA § 212(c) as to aliens convicted of certain crimes, did not apply to aliens convicted of such offenses (pursuant to plea bargains) prior to the enactment of IIRIRA. The court found that § 304(b) did not apply retroactively based on the court's view that the language of the statute at § 304(b) did not explicitly or expressly call for retroactive application. However, the Court in *St. Cyr* contrasted IIRIRA § 304(b) with § 322(c), and other similarly worded sections of IIRIRA, as constituting instances in which Congress did “indicate unambiguously its intention to apply specific provisions retroactively.” *St. Cyr*, 121 S.Ct. at 2289 & n. 43 (quoting section 322(c)). Therefore, the Court's holding in *St. Cyr* clearly supports, rather than undercuts, *Moosa*'s holding in this respect.

Upon review, we concur with the director's decision to terminate the applicant's temporary resident status. Pursuant to the decision of the court in *Moosa*, IIRIRA § 322 is the effective law at the time of the director's decision, because the law is retroactive. In addition, as held by the *Moosa* court, the definition of “conviction” in IIRIRA § 322(a) encompasses Texas deferred adjudications. Therefore the director correctly determined that the applicant's guilty plea to felony burglary under the Texas deferred adjudication statute is a conviction for immigration purposes, rendering the applicant inadmissible to the United States. The applicant is, therefore, ineligible for temporary resident status on this basis.

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<sup>8</sup> Counsel also asserts that the director's decision was barred by the equitable doctrine of laches. Laches is an equitable form of relief that is available only through the courts. The jurisdiction of the AAO is limited to that authority specifically granted to it by the Secretary of the United States Department of Homeland Security. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). Accordingly, the AAO has no authority to address the petitioner's laches claim.



An additional issue is whether the applicant's conviction for burglary constitutes a crime involving moral turpitude (CIMT). As stated above, the record reflects that the applicant pleaded guilty to a violation of the Texas Penal Code, first degree burglary of a habitation with the intent to commit theft, a felony.

As stated above, section 212(a)(2)(A) of the Act states, in pertinent part:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.<sup>9</sup>

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

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<sup>9</sup> 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). See *Lafarga v. INS*, 170 F.3d 1213, 1214-15 (9th Cir. 1999) (quoting 8 U.S.C. § 1182(a)(2)(A)(ii)(II)); see also *Garcia-Lopez v. Ashcroft*, 334 F.3d 840, 843-46 (9th Cir. 2003). For the purpose of the petty offense exception, “‘the maximum penalty possible’ . . . refers to the statutory maximum sentence, not the guideline sentence to which the alien is exposed.” *Mendez-Mendez v. Mukasey*, 525 F.3d 828, 835 (9th Cir. 2008) (offense of bribery of a public official did not qualify for petty offense exception where statutory maximum for offense was 15 years). The applicant was not under 18 years of age at the time the crime was committed and the maximum penalty possible for the crime exceeded one year. Accordingly, the applicant does not qualify under either exception.

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General set forth a new framework for determining whether a conviction is a crime involving moral turpitude where the language of a criminal statute encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703.

Burglary has been held to be a crime involving moral turpitude where the crime intended after the breaking and entering is a CIMT, or if it is of an occupied dwelling. *Matter of Louissaint*, 24 I&N Dec. 754, 759 (BIA 2009); *Matter of M-*, 2 I&N Dec. 721, 723 (BIA 1946). However, where no intent to commit a crime involving moral turpitude is required by the statute, burglary has been held not to be a crime involving moral turpitude. See *Matter of M-*, 2 I&N Dec. 721 (BIA 1946).

At the time of the applicant’s conviction, Tex. Penal Code Ann. tit. 7 (T.P.C.), Sec. 30.02 (Vernon), provided for a conviction of burglary on the basis of a showing of intent to commit either a felony or a theft.<sup>10</sup> Upon review, the AAO finds there is sufficient evidence in the record

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<sup>10</sup> The AAO notes that T.P.C. 30.02 was most recently amended in 1999 to substitute at subsection (a), subdivisions (1) to (3), “felony, theft, or an assault” for “felony or theft”. Acts 1999, 76 Leg., ch. 727. In addition, section 2 of Acts 1999, 76<sup>th</sup> Le., ch. 727 provides:

to show that the applicant violated T.P.C. section 30.02 by engaging in criminal activity involving moral turpitude. The record of conviction clearly indicates the applicant possessed the intent to commit theft. The AAO notes that theft offenses are generally considered crimes involving moral turpitude, except where only a temporary taking is intended. See *Matter of Garcia*, 11 I&N Dec. 521 (BIA 1966); see also *Matter of V-*, 2 I&N Dec. 340 (BIA 1940), *Matter of V- I-*, 3 I&N Dec. 571 (BIA 1949). Pursuant to *Matter of Grazley*, 13 I&N Dec. 330, 333 (BIA 1973), in order for a theft offense to constitute a crime of moral turpitude, it must involve the intent to permanently deprive a person of his or her property. In the present case, the Texas courts have found that each of the statutory requirements for the offense of theft contains the element of unlawful appropriation of property with intent to deprive the owner of property. See e.g., *Ellis v. State*, 714 S.W.2d 465, 475 (Tex. App. 1st 1986). The Texas courts have found that this element requires a permanent deprivation of property. See *id.* Therefore, the applicant's conviction for burglary is a crime involving moral turpitude that renders the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Accordingly, the petitioner is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a CIMT, and this constitutes an additional basis for denial of the application.

In light of the conviction record, the applicant is not eligible for temporary resident status on account of his felony conviction. 8 C.F.R. § 245a.2(c)(1). In addition, the applicant's conviction for burglary is a CIMT that renders the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and, therefore, ineligible for temporary resident status. No waiver of such ineligibility is available. Accordingly, the AAO shall not disturb the director's decision terminating the applicant's temporary resident status.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The director's August 27, 2012 decision is affirmed.

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"The change in law made by this Act applies only to an offense committed on or after the effective date [Sept. 1, 1999] of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For the purpose of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date."