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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EUGENIO VILLA-MARTINEZ,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-73672

Agency No. A027-692-733

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 4, 2009**
Pasadena, California

Before: O'SCANNLAIN, RYMER, and WARDLAW, Circuit Judges.

Eugenio Villa-Martinez ("Villa"), a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") affirmance of the Immigration Judge's ("IJ") denial of his application for adjustment of status. We have jurisdiction pursuant to 8 U.S.C. § 1252, and we deny the petition.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

When, as here, the BIA conducted a de novo review of the record, our “review is limited to the BIA’s decision, except to the extent the BIA expressly adopted the IJ’s opinion.” *Mendez-Mendez v. Mukasey*, 525 F.3d 828, 832 (9th Cir. 2008) (internal quotation marks omitted). We “review[] purely legal questions . . . de novo.” *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003).

The BIA did not err in concluding that Villa failed to establish his eligibility for a discretionary grant of adjustment of status pursuant to Immigration and Nationality Act (“INA”) section 245(i), 8 U.S.C. § 1255(i). Villa cannot demonstrate that he “is admissible to the United States for permanent residence.” 8 U.S.C. § 1255(i)(2)(A). A conviction for violating any state or federal law or regulation “relating to a controlled substance,” as defined in 21 U.S.C. § 802(6), renders an alien inadmissible. INA § 212(a)(2)(A)(i)(II), 8 U.S.C. § 1182(a)(2)(A)(i)(II). We are not persuaded by Villa’s arguments that his extensive record of convictions for drug-related violations does not bar his admissibility.

We reject Villa’s argument that his pre-1986 convictions do not affect his admissibility because they occurred prior to the enactment of the Anti-Drug Abuse Act of 1986 (“ADAA”), Pub. L. 99-570, § 1751, 100 Stat. 3207, 3207-47 to 3207-48 (1986). A conviction for the illicit possession of a narcotic drug or marijuana

was a ground for deportation or exclusion (the precursors to removal and inadmissibility, respectively) even prior to 1986. *See Matter of Hernandez-Ponce*, 19 I. & N. Dec. 613, 613–16 (BIA 1988); *see also Dunn v. INS*, 499 F.2d 856, 856–58 (9th Cir. 1974). The ADAA merely expanded the type of drug offenses for which an alien may be removed. *See* § 1751, 100 Stat. at 3207-47 to 3207-48. We therefore need not consider whether the ADAA applies retroactively. *Cf. Kankamalage v. INS*, 335 F.3d 858, 862–64 (9th Cir. 2003). Villa otherwise concedes that he has at least three convictions under California statutes “relating to” controlled substances listed in the federal schedule. 8 U.S.C. § 1182(a)(2)(A)(i)(II); *see* 21 U.S.C. § 812(c), Schedule I(c)(10) (listing marijuana); 21 U.S.C. § 812(c), Schedule III(b)(7) (listing phencyclidine (“PCP”)). He is therefore inadmissible to the United States.¹

Villa is ineligible for an INA section 212(h) waiver. The Attorney General may waive the application of § 1182(a)(2)(A)(i)(II) only for convictions that “relate[] to a single offense of simple possession of 30 grams or less or marijuana.” 8 U.S.C. § 1182(h). Villa’s 1984 conviction for being under the influence of PCP

¹ Because we hold that Villa’s pre-1986 convictions render him inadmissible, we need not reach his arguments that his 1988 conviction for violating California Health and Safety Code section 11550(b) cannot be considered for immigration purposes.

and his 1985 conviction for selling marijuana are thus beyond the scope of a section 212(h) waiver. That these convictions preceded his application for adjustment of status by more than fifteen years is irrelevant, because they fail to qualify for a section 212(h) waiver as a threshold matter.

Contrary to Villa's contention, Congress's decision not to waive all drug convictions that are more than fifteen years old does not constitute a due process violation. *See Munoz v. Ashcroft*, 339 F.3d 950, 954 (9th Cir. 2003) ("Since discretionary relief is a privilege created by Congress, denial of such relief cannot violate a substantive interest protected by the Due Process clause.").

PETITION DENIED.