U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6)

Date: JAN 19 2007

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

CHARGE:

Notice: Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] - Inadmissible at time of entry or adjustment of status under section 212(a)(2)(A)(i)(II), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(II)] - Controlled substance violation

APPLICATION: Termination of proceedings

ORDER:

PER CURIAM. This case is presently before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6) *v. Gonzales*, (b) (6) (b) (6) (en banc). The court held that the inadmissibility of an alien who adjusts status under the Special Agricultural Worker (SAW) program is determined as of the date of admission for lawful temporary residence, not as of the date of adjustment to lawful permanent resident status.

The respondent in this case was convicted of a drug offense after he gained lawful temporary residence as a SAW on November 10, 1988, but before his status was automatically adjusted to lawful permanent resident status on December 1, 1990. The respondent was initially charged with removability as an alien convicted of a controlled substance offense and of an aggravated felony, but those charges were later withdrawn and he was charged with removability as an alien who was inadmissible at the time of adjustment of status. The court found that because the respondent was not inadmissible at the time he adjusted to lawful temporary status, the charge of removablity could not stand.

(b) (6)

Pursuant to the court's decision, the decision of the Board in this case dated December 19, 2002, is vacated, and the removal proceedings are hereby terminated.

FOR THE BOARD