FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHRISTOPHER JOHN DILLINGHAM,
Petitioner,

No. 97-71038

v.

I&NS No.

13228

13229

COUNSEL

Paul A. Davis, Los Angeles, California, for the petitioner.

Dillingham's right to equal protection by refusing to recognize the foreign expungement. Accordingly, we reverse the decision of the BIA and remand for a discretionary determina-

permitted to enter the country in July 1992 on a six-month nonimmigrant visitor visa, pursuant to the waiver provisions of 8 U.S.C. § 1182(d)(3)(A). After his authorized period of stay had expired, Dillingham applied for adjustment of status to legal permanent resident on May 13, 1993, pursuant to an immediate relative visa petition filed by his wife under 8 U.S.C. § 1255. The INS district director in Portland, Oregon, denied his application on September 14, 1993, on the grounds that the British Rehabilitation of Offenders Act was not a counterpart to the Federal First Offenders Act ("FFOA"), and that his prior drug conviction therefore rendered him inadmissible.

On November 16, 1993, the INS issued an Order to Show Cause, charging him with deportability as an alien who (1) had remained in the United States beyond the period of his authorized stay; and (2) was excludable at the time of his Ca993, pursua(1)
of 8 U.S.C. § 1a)(A (thathearcharb therey aI(nonimonvi(1)) Tj T* 10.1073 T 10.1085 Judges AcIJ"FF1993O diN

II.c

In addition to contending that we lack jurisdiction due to Dillingham's expunged conviction, at the eleventh hour the Service raised the argument that we are divested of jurisdiction because Dillingham admitted the facts of his conviction to INS officers. Specifically, the Service contends that under INA § 212(a)(2)(A)(i) (codified at 8 U.S.C. § 1182(a)(2)(A)(i)),**9** even apart from his conviction, an alien who admits having committed a controlled substance offense is rendered statutorily inadmissible and ineligible for adjustment of status.

We believe that under the terms of § 212(a)(2)(A)(i), however, the fact that Dillingham "admitted" his prior offense is of no greater consequence than the conviction itself. Tellingly, the language of IIRIRA § 309(c)(4)(G) is identical for aliens deemed inadmissible by the INS, as for those deemed deportable. Thus, the interpretation of INA § 212(a)(2)(A)(i) and IIRIRA § 309(c)(4)(G) pressed upon us by the Service would require overturning Lujan-Armendariz as well as every terms [illegible]

We reject this position and conclude that we have jurisdiction to review the central issue in this case: namely, whether Dillingham is statutorily ineligible for discretionary relief because he still stands convicted of a prior drug offense. See also Webster v. Doe, 486 U.S. 592, 603 (1988) (holding that absent a clear statement of congressional intent, limitations on judicial review should not be construed to prevent review of substantial constitutional questions); cf. INS v. St. Cyr, _____ U.S. _____, 121 S. Ct. 2271 (2001).

III.

A.

As a general rule, the BIA does not recognize expungements of controlled substance offenses for federal immigration purposes. See Matter of A-F, 8 I&N Dec. 429 (1959). However, in 1970, Congress carved out a narrow exception

consistent with congressional objectives. See id.**11** The Consti-

Urrestarazu, and Lujan-Armendariz, the Board ruled that Dillingham failed to satisfy the fourth criterion of Manrique, because he was rehabilitated under a foreign (as opposed to a state) statute, and because as a general policy matter the Board has never recognized foreign pardons of crimes of moral turpitude. By likening foreign expungements of simple drug possession offenses to foreign pardons of crimes of moral turpitude -- a category of crimes for which Congress has not enacted a domestic rehabilitation statute analogous to the FFOA -- the Board improperly skirted the constitutional issue of differential treatment in this case.

Had the Board restricted itself to a discussion of the propri-

awaiting deportation into the custody of adults who are not close blood relatives, but rejecting the contention that " `minimizing administrative costs' is adequate justification for the Service's [policy]"). Moreover, we do not seek to impugn the intentions of the government here, but we find that the Court's reasoning in Stanley applies.

The private liberty interests involved in deportation proceedings are indisputably substantial. See, e.g. ,

no way be interpreted as an impediment to the Board's future establishment of appropriate standards concerning these and other relevant criteria.

Thus, as the Court stated in Stanley, although

ecuted and expunged under foreign rather than state or federal law, than it has been in previous cases where the government drew a distinction between expungements granted under the laws of different states. Ultimately, for our purposes the fact that Dillingham's conviction took place on British soil prior to his arrival in this country and was expunged pursuant to a British rehabilitative statute amounts to a distinction without a difference. The equal protection rationale driving our controlling cases remains unaffected. Simply stated, under the

have committed substantially identical offenses and have had their convictions expunged under substantially identical statutes, solely because of where the offense occurred. u Iovat-

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judicial review of political questions . . . dictate a narrow standard of review of decisions made by the Congress or the President in the area of immigration and naturalization. " Mathews v. Diaz, 426 U.S. 67, 81-82, 96 S. Ct. 1883, 1892, 48 L. Ed. 2d 478 (1976). We will only overturn a classification if it is "wholly irrational." Id. at 83, 96 S. Ct. at 1893.

I see nothing irrational in a determination that we will not treat aliens who obtain expungement of drug offenses in other countries in the same way that we treat those who obtain expungement of offenses in this country. Of course, under the Federal First Offender Act, 18 U.S.C. § 3607, some simple drug possession convictions can be expunged. When they are, they are not used as a predicate for deportation; the Attorney General has so decided. On equal protection grounds, we have extended that to expungements under state laws. See Lujan-

tries and their ways are not necessarily, or even particularly,
the same as this country and its ways. A much more complex
task is placed upon the shoulders of an administrative agency
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Thus, I respectfully dissent.