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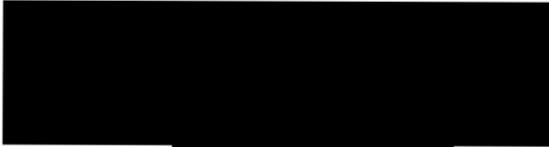
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U.S. Citizenship  
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FILE: [Redacted]  
MSC-06-063-11680

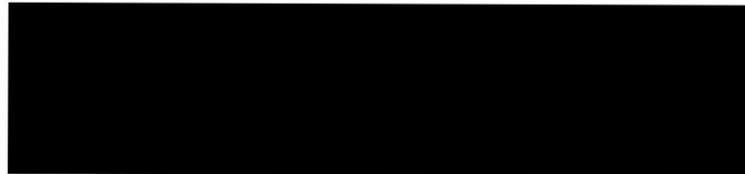
Office: LOS ANGELES

Date: **DEC 11 2008**

IN RE: Applicant: [Redacted]

PETITION: 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:

This is the decision of the Administrative Appeals Office in your case. 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 if the matter was remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to be "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:**

The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the director, Los Angeles, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, together comprising the I-687 Application. The director determined that the applicant had not established that he 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. Specifically, the director noted that the applicant had one felony and one misdemeanor conviction under California state law. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

The applicant is represented by counsel on appeal. Counsel argues that the applicant's 1999 felony perjury conviction, and 1995 misdemeanor soliciting sales of narcotics conviction are not disqualifying criminal convictions for immigration purposes.

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 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 three or more misdemeanors in the United States is ineligible for adjustment to temporary resident status. 8 U.S.C. § 1255a(a)(4)(B); 8 C.F.R. § 245a.(a)(4)(B). "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).

"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 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).

Additionally, an applicant who has been convicted of a crime involving moral turpitude (CMT) is inadmissible, and therefore ineligible for temporary resident status. But, an alien with one CMT is not inadmissible if he or she meets the petty offense exception. *See* 8 U.S.C. § 1182(a)(2)(A)(ii). A CMT will meet the petty offense exception if the offense was committed when the alien was under 18 years of age (youthful offender exception), or "the maximum penalty possible for the crime of which the alien was convicted . . . did not exceed imprisonment for one year and . . . the alien was not sentenced to a term of imprisonment in excess of 6 months." *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 youthful offender exception will apply if: 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. 8 U.S.C. § 1182(a)(2)(A)(ii)(I). In this case, the AAO observes that the applicant was 40 years old at time of his 1995 narcotics conviction. Thus, the youthful offender exception does not apply.

The record contains certified court documents that reflect the following series of events in the Los Angeles County Municipal Court: on November 2, 1994, the applicant was arrested and charged with a misdemeanor violation of section 653F(D) of the California Penal Code – *Soliciting Commission of Certain Offenses*. The applicant entered a plea of *nolo contendere* on October 4, 1995. Imposition of sentence was suspended, and the applicant was placed on probation for a period of 24 months. The applicant thereafter violated the terms of probation and was sentenced to 120 days in the county jail on December 3, 1997.<sup>1</sup>

Additionally, certified court documents from the Los Angeles County Superior Court indicate that the applicant was arrested on November 1, 1999 and charged with a felony violation of section 118 of the California Penal Code – *Perjury*. On that date, the court ordered that the imposition of sentence be suspended, and the applicant was placed on formal probation for a period of 3 years, and ordered to serve 120 days in the county jail. An additional charge of violating section 114 of the

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<sup>1</sup> The conviction records also reveal a series of arrests and criminal charges that were ultimately dismissed: on March 6, 1995, the applicant was charged with a violation of section 11364 of the California Health and Safety Code – *possession of pipe for smoking controlled substances*; on July 17, 1995 the applicant was charged with *attempted theft*, in violation of section 664-484(A) of the California Penal Code.

California Penal Code – *Use of False Documents to Conceal Citizenship*, was dismissed under the terms of a plea agreement.

At issue in this proceeding is whether the applicant has established that he resided in the United States throughout the statutory period and whether he met his burden of establishing that he is admissible to the United States, that he has not been convicted of three misdemeanors or a felony, and that he is eligible to adjust to lawful permanent resident status. Here, the applicant has failed to meet this burden.

On appeal, counsel does not challenge the existence of the felony and misdemeanor convictions. Counsel argues that the misdemeanor solicitation conviction “does not render [the applicant] inadmissible as a controlled substance trafficker.” The AAO has reviewed the decision of the director denying the application for temporary residence (Form I-687) and we note that the director did not conclude that the applicant was inadmissible as a trafficker in a controlled substance. We affirm that conclusion. Nonetheless, the solicitation conviction remains a misdemeanor conviction for immigration purposes and will be accorded appropriate weight.

Counsel also argues that the felony perjury conviction is “not an aggravated felony as the sentence was for less than one year” and that it should be accorded weight as a misdemeanor offense. We find this argument to be without merit. The applicant’s perjury conviction is a CIMT because of the element of fraud inherent in the offense, and thus renders the applicant ineligible for temporary resident status. *See generally Notash v. Gonzales*, 427 F.3d 693 (9<sup>th</sup> Cir. 2005). Therefore, the applicant is ineligible for temporary resident status on this basis also.

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