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**U.S. Citizenship
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FILE: [REDACTED]
MSC 06 101 27003

Office: LOS ANGELES

Date: **JUN 04 2008**

IN RE: Applicant:



APPLICATION: Application for Temporary Resident Status under Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the National Benefits Center. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, 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 District Director, Los Angeles, and is now before the Administrative Appeals Office 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. The director denied the application, finding that the applicant had been convicted of a felony and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that she has not been convicted of a felony offense and claims that she was only sentenced to three days in jail and 36 months of probation.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to temporary resident status. Section 245A(a)(4)(B) of the Act; 8 U.S.C. § 1255a(a)(4)(B). The regulations provided relevant definitions at 8 C.F.R. § 245a.

"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).

An alien is inadmissible if she has been convicted of a crime involving moral turpitude (other than a purely political offense), or if she admits having committed such crime, or if she admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act, formerly section 212(a)(9) of the Act. Pursuant to 8 C.F.R. § 245a.18(c)(2)(i), this ground of inadmissibility, (crimes involving moral turpitude) may *not* be waived.

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. De George*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951).

In the present matter, the record shows that on September 6, 1984, the applicant pled guilty to and was convicted of fraudulently obtaining aid, a felony in violation of section 11483 of the California Welfare and Institutions Code. (Case No. CR19297FA).

On appeal, the applicant's disputes the director's basis for denying the application, suggesting that the sentence that was imposed for the crime she committed was not commensurate with a felony offense.

However, section 11483.5 of the California Welfare and Institutions Code classifies the applicant's offense as a felony and, as stated above, the sentence that was actually served by the applicant is irrelevant as to whether a particular offense is a felony or misdemeanor.

In the present matter, the record shows that the applicant was convicted of a felony offense, which may be deemed a crime involving moral turpitude thereby potentially rendering the applicant inadmissible for having committed such an offense. Despite the applicant's belief, her commission of a felony offense renders the applicant ineligible for temporary resident status. 8 C.F.R. § 245a.2(c)(1). No waiver of such ineligibility is available.

Additionally, based on the nature of the crime of which she has been convicted, the applicant is also found to be inadmissible for having committed a crime involving moral turpitude. The Board of Immigration Appeals (BIA) has explained that moral turpitude "refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." *Matter of Franklin*, 20 I&N Dec 867,868 (BIA 1994), *aff'd*, 72 F.3d 571 (8th Cir. 1995). When determining whether a crime involves moral turpitude, the statute under which the conviction occurred controls. *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989). If the statute defines a crime "in which turpitude necessarily inheres," then a conviction under that statute constitutes a crime involving moral turpitude. *Id.* The BIA has stated that "[t]he test to determine if a crime involves moral turpitude is whether the act is accompanied by a vicious motive or a corrupt mind. An evil or malicious intent is said to be the essence of moral turpitude." *Matter of Flores*, 17 I&N Dec. 225, 227 (BIA 1980) (internal citations omitted).

The statute under which the petitioner was convicted prescribes a *mens rea* of intentional commission, as it specifies that act must be committed "by means of false statement or representation" for the purpose of "obtain[ing] aid for a child not in fact entitled thereto" This criminal intent meets the test for moral turpitude described in *Matter of Flores*. Further, while we acknowledge that a district court's decision is not binding precedent outside of the district in which the case arose, we note that in *Miller v. U.S. Immigration and Naturalization Services*, 762 F.2d. 21 (3rd Cir. 1985), the court found and the alien conceded that welfare fraud is classified as a crime involving moral turpitude. Similarly, in the present matter, the applicant has pled guilty to and has been convicted of welfare fraud and is therefore inadmissible to the United States based on having committed a crime involving moral turpitude.

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