



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: NATIONAL BENEFITS CENTER

Date: MAR 07 2008

MSC-05-218-12537

IN RE:

Applicant:

APPLICATION:

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. 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.

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 Director, National Benefits Center. 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. The director determined that the applicant has been convicted of either one felony or three or more misdemeanors. The director denied the application, finding that on this basis the applicant is not eligible to adjust to temporary resident status under section 245A of the Act.

On appeal, the applicant asserts that she regrets her mistake. The applicant maintains that she would never make the same mistake again.

An applicant for temporary resident status must establish that she is admissible to the United States as an immigrant and has not been convicted of any felony or of three or more misdemeanors committed in the United States. Section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4). The regulations provide relevant definitions at 8 C.F.R. § 245a.

“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 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).

“Felony” means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

An FBI report based upon the applicant’s fingerprints reveals that on either July 1, 1989 or July 5, 1989, she was arrested under the alias [REDACTED]. The applicant was charged with one count of *Transportation, sale, giving away, etc., of designated controlled substances* in violation of section 11352 of the California Health and Safety Code (CA HLTH & S § 11352 (1989)) and one count of *Possession or purchase for sale of designated controlled substances* in violation of section 11351 of the California Health and Safety Code (CA HLTH & S § 11351 (1989)). Certified court documents in the applicant’s record provide that on July 27, 1989 she

was convicted for both of these offenses under a plea of guilt and placed on probation for three years with a prison sentence of 120 days.

The regulations define "felony" as a crime committed in the United States punishable by imprisonment for a term of more than one year. 8 C.F.R. § 245a.1(p). *Transportation, sale, giving away, etc., of designated controlled substances* is an offense that shall be punished by imprisonment in the state prison for three, four, or five years. CA HLTH & S § 11352. *Possession or purchase for sale of designated controlled substances* is an offense that shall be punished by imprisonment in the state prison for two, three, or four years. CA HLTH & S § 11351. The applicant's convictions under these statutes renders her convicted of two felony offenses pursuant to 8 C.F.R. § 245a.1(p). Consequently, the applicant is ineligible for temporary resident status based on her two felony convictions. Section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4).

An applicant for temporary resident status must also establish that she is admissible to the United States as an immigrant. Section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4).

Under section 212(a)(2)(A)(i)(I) of the Act, an alien is inadmissible if she has been convicted of a crime involving moral turpitude. 8 U.S.C. § 1182(a)(2)(A)(i)(I). Crimes involving moral turpitude are generally defined as 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. See *Jordan v. De George*, 341 U.S. 223, 71 S.Ct. 703 (1951); *Matter of Serna* 20 I&N Dec. 579, 581 (BIA 1992). A crime involving moral turpitude is based on the offender's evil intent or corruption of the mind. *Matter of Serna* 20 I&N Dec. at 581. The applicant has been convicted under the California Health and Safety Code for *Transportation, sale, giving away, etc., of designated controlled substances* and *Possession or purchase for sale of designated controlled substances*. CA HLTH & S §§ 11352, 11351. The State of California felony complaint provides that the controlled substance at issue in this case is cocaine. The Board of Immigration Appeals in *In re Khourn* held that a conviction for distribution of cocaine under 21 U.S.C. § 841(a)(1) (1988), is a conviction for a crime involving moral turpitude. 21 I&N Dec. 1041 (BIA 1997). The applicant's convictions for the transportation/sale and possession/purchase for sale of cocaine is analogous to the facts in *In re Khourn*. In this regard, the applicant is inadmissible to the United States based on her commission of a crime involving moral turpitude. Section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I).

Under section 212(a)(2)(A)(i)(II) of the Act, an alien is inadmissible for the violation of any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. § 802)). 8 U.S.C. § 1182(a)(2)(A)(i)(II). The applicant has been convicted under the California Health and Safety Code for the transportation/sale and possession/purchase of cocaine. Cocaine is has been designated as a controlled substance under Schedule II of the Controlled Substances Act. 21 U.S.C. § 812. Therefore, the applicant's conviction for this offense renders her inadmissible to

the United States as a controlled substance violator. Section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II).

In conclusion, the applicant's two felony convictions render her ineligible for temporary resident status. Section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4). No waiver of such ineligibility is available. Furthermore, the applicant's convictions for crimes involving moral turpitude and violation of laws relating to a controlled substance render her inadmissible to the United States. Section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i). Pursuant to section 245A(d)(2)(B)(ii)(1) of the Act, waivers of inadmissibility are precluded for applicants convicted of such crimes. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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