U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: LOS ANGELES Date: OCT 04 2007

XPW 91 024 0859

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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 adjustment from temporary to permanent resident status was initially denied by the Director, Western Service Center, on March 15, 1993. A timely appeal was filed with the Administrative Appeals Office (AAO) where the matter was remanded. In a more recent decision, the Director, California Service Center, issued a new decision denying the application. The applicant's previously filed appeal remains in effect and all submissions in response to the latest adverse decision have been considered. The appeal will be dismissed.

The director denied the application because he determined that that the applicant was ineligible for the immigration benefit sought based on his conviction of a felony offense. The director also cited two theft offenses of which the applicant had been previously convicted.

On appeal, counsel asserts that the applicant has overcome the ground for ineligibility cited by the director and submits evidence showing that the applicant's felony conviction has been vacated pursuant to section 1016.5 of the California Penal Code (PC). The applicant's felony conviction was vacated because he had pled guilty without being advised of the potential immigration consequences of such a plea.

Accordingly, based on a review of the documentation submitted, the AAO finds that the applicant is no longer ineligible based on his felony criminal conviction. Notwithstanding the applicant's ability to overcome the ground cited as the basis for the director's denial, the applicant remains ineligible to adjust from temporary to permanent resident status due to his two remaining criminal convictions, which render him inadmissible.

Specifically, an alien is inadmissible if he or she has been convicted of a crime involving moral turpitude (other than a purely political offense), or an attempt or a conspiracy to commit such crime. Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality 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 man or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. DeGeorge*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951).

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 of an act, "steal, take, carry, lead, or drive away the personal property of another." This criminal intent meets the

test for moral turpitude described in *Matter of Flores*. Further, there is relevant precedent for treating theft as a crime involving moral turpitude. *See Morasch v. INS*, 363 F.2d 30 (9th Cir. 1966).

In the present matter, the record shows that the applicant remains convicted of two of the following offenses:

1. On December 16, 1974, the applicant was convicted of petty theft, a misdemeanor pursuant to section 484/488 PC. He was sentenced to serve 10 days in jail and placed on probation for 12 months. Case no. [redacted]

2. On June 21, 1981, the applicant was convicted of theft of personal property, a misdemeanor pursuant to section 484 PC. He was order to pay a fine of $260 and placed on probation for 12 months.

The applicant's theft convictions lead to the conclusion that the applicant had been convicted of two crimes involving moral turpitude under section 212(a)(2)(A)(i)(I) of the Act, which render the applicant inadmissible. While section 212(a)(2)(A)(ii) of the Act notes that there are exceptions to inadmissibility that results from the commission of a single crime, the applicant's criminal record shows that he was convicted of more than one offense. As such, the provisions of the petty theft exception cited in section 212(a)(2)(A)(ii) of the Act will not be applied in the present matter.

Accordingly, as the applicant is inadmissible based on the two convictions of crimes involving moral turpitude as cited above, he remains eligible for adjustment from temporary to permanent resident status.

Lastly, though not discussed in the director's decision, the record shows that the applicant's temporary resident status was terminated on March 15, 1993. While the record shows that the applicant filed a timely appeal with regard to the adverse decision concerning his permanent resident status, there is no evidence that the applicant filed another appeal with regard to the adverse decision concerning his temporary resident status. As such, the applicant's temporary resident status has been terminated since March 15, 1993.

An alien whose temporary resident status has been terminated under 8 C.F.R. § 245a.2(u) is ineligible for adjustment from temporary to permanent resident status. 8 C.F.R. § 245a.3(c)(5). As the applicant in the present matter is not a temporary resident, he is ineligible for adjustment from temporary to permanent resident status for this additional reason.

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