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

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[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: MAY 06 2008

XNK-88-115-00042

IN RE:

Applicant:

[Redacted]

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:

[Redacted]

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 Records 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 remanded for further action, you will be contacted.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, Western Service Center is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application for the reasons specified in the Notice of Intent to Terminate (NOIT). Specifically, the director found that the applicant had been convicted of a felony crime also held to involve moral turpitude and, therefore, was not eligible for temporary resident status. The director indicated that the applicant failed to timely respond to the NOIT.

On appeal, counsel for the applicant indicated that the director erred in stating that the applicant failed to respond to the NOIT. Counsel stated that a timely response was actually received by certified mail. It is noted that the record does not indicate that the applicant timely responded to the NOIT. Counsel failed to include any documentation, such as evidence of a certified mail receipt document, indicating that the applicant timely responded to the NOIT. Counsel also stated that the applicant denies that any conviction exists, that any conviction is a felony, and that any conviction involves moral turpitude. Counsel also included a request from the applicant for a complete copy of his immigration file. The record indicates that this request was fulfilled on August 8, 1990. Counsel indicated that a brief in support of the appeal would be filed within 30 days of receipt of the copy of the applicant's immigration file. More than 17 years have passed since the applicant was provided with a copy of his immigration file, and the applicant has failed to submit additional information or a brief in support of his appeal. Therefore, the record will be considered complete.

To be eligible for temporary resident status, an individual must not have been convicted of any felony or of three or more misdemeanors. 8 C.F.R. § 245a.2(c)(1). 8 C.F.R. § 245a.1(p) defines a felony as a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such applicant 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 applicant actually served.

An individual is ineligible for temporary resident status if he or she is excludable under the provisions of section 212(a) of the Immigration and Nationality Act (Act) whose grounds of excludability may not be waived, pursuant to section 245A(d)(2)(B)(ii) of the Act. 8 C.F.R. § 245a.2(c)(3).

Applicants who have been convicted of certain criminal offenses are deemed inadmissible to the United States on grounds enumerated in Section 212 of the Act. An applicant is inadmissible if he or she has been convicted of a crime involving moral turpitude (CIMT) (other than a purely political offense), or admits having committed such crime, or admits committing acts which constitutes the essential elements of such crime or an attempt or conspiracy to commit such a crime, unless certain exceptions apply. Section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1082(a)(2)(A)(i)(I).

According to 8 C.F.R. § 245a.2(d)(5), an applicant for adjustment of status to temporary resident status has the burden of proving by a preponderance of the evidence that he or she has resided in the

United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status.

In the NOIT dated June 7, 1990, the director explained that records of the Immigration and Naturalization Service (INS), currently Citizenship and Immigration Services (CIS), indicated that the applicant was convicted of the following felony that also constitutes a crime involving moral turpitude (CIMT):

NRS 205.090, 205.110 – Forgery (Count I) (alias of Molina, Joaquin) on March 23, 1989.

As stated above, the record indicates that the applicant failed to timely respond to the NOIT.

The issue in this proceeding is whether the applicant has established that he is eligible for temporary resident status. Specifically, it must be determined whether the applicant has established that he is not ineligible for temporary resident status under the LIFE Act due to having been convicted of a felony that is also a crime involving moral turpitude.

The record includes a copy of a “Judgment of Conviction (Plea)” (Judgment) from the District Court of Clark County, Nevada signed on June 26, 1989 by a district court judge. Docket No. [REDACTED]. The Judgment indicates the judge found the applicant guilty on June 1, 1989 of one count of forgery in violation of Nevada Revised Statute Sections 205.090 and 205.110. The judgment indicates that the applicant was sentenced to five years in the Nevada State Prison. This sentence was suspended and the applicant was given probation for an indeterminate period not to exceed five years, with certain conditions. Since the applicant was sentenced to a prison term of five years, the crime of which he was convicted was clearly punishable by imprisonment for a term of more than one year. Since the applicant was convicted of a crime committed in the United States and punishable by imprisonment for a term of more than one year, the applicant is found to have been convicted of a felony. 8 C.F.R. § 245a.1(p). Therefore, the applicant is found to be ineligible for temporary resident status 8 C.F.R. § 245a.2(c)(1).

In addition, the applicant has been convicted of a CIMT. In *Matter of Seda*, the Board of Immigration Appeals determined that forgery is a CIMT. *Matter of Seda*, 17 I. & N. Dec. 550 (BIA 1980). The applicant was convicted of forgery. Therefore, he has been found to have been convicted of a CIMT.

On appeal, counsel stated that the applicant denies that any conviction exists, that any conviction is a felony, and that any conviction involves moral turpitude. Counsel has provided no evidence to support the claims that the applicant was not convicted of a felony and was not convicted of a crime involving moral turpitude.

As stated above, to be eligible for temporary resident status, an individual must not have been convicted of any felony or of three or more misdemeanors committed in the United States. 8 C.F.R. § 245a.11(d)(1). An individual is also ineligible for temporary resident status if he or she is excludable under the provisions of section 212(a) of the Immigration and Nationality Act (Act)

whose grounds of excludability may not be waived, pursuant to section 245A(d)(2)(B)(ii) of the Act, 8 C.F.R. § 245a.2(c)(3). An applicant is inadmissible if he or she has been convicted of a CIMT (other than a purely political offense), or admits having committed such crime, or admits committing acts which constitute the essential elements of such crime or an attempt or conspiracy to commit such a crime, unless certain exceptions apply. Section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1082(a)(2)(A)(i)(I). The record indicates that the applicant was convicted of forgery in the United States in violation of NRS 205.090 and NRS 205.110 and was sentenced to five years in prison . Therefore, the applicant has been found to have been convicted of a felony that constitutes a crime involving moral turpitude. As a result, the applicant is found to be ineligible for temporary status.

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