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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
MSC-06-081-12019

Office: LOS ANGELES

Date: **APR 15 2009**

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 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 remanded for further action, you will be contacted.

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 Field Office Director, Los Angeles. 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 denied the application, finding that the applicant had been convicted of a felony under section 496(a) of the California Penal Code for *Receiving/Concealing Stolen Property*.

On appeal, counsel asserts that the court disposition related to the applicant's conviction for *Receiving/Concealing Stolen Property* shows that the applicant was actually convicted of a misdemeanor. Counsel contends that since the applicant has not been convicted of a felony, the appeal should be sustained.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 245a.2(c)(1).

"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).

"Conviction" is defined under section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48)(A) as a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

A Federal Bureau of Investigation (FBI) report based upon the applicant's fingerprints reveals that on April 22, 1993 he was arrested by the Los Angeles Police Department and charged with *Grand Theft Auto* ([REDACTED]). The court disposition related to this offense shows that on May 21, 1993, the applicant was convicted of *Receiving Known Stolen Property* in violation of section 496(a) of the California Penal Code. The applicant was sentenced to imprisonment in the county jail for 270 days and probation for three years (Superior Court of California, County of Los Angeles, [REDACTED]). The maximum term of imprisonment for this offense is not to exceed one year. Cal. Penal Code § 496(a) (West 1993). Therefore, this crime is considered a misdemeanor pursuant to 8 C.F.R. § 245a.1(o).

Since the applicant's conviction for *Receiving Known Stolen Property* is a misdemeanor, the AAO finds that the applicant has overcome the basis for the director's denial. Nevertheless, the AAO has determined in a *de novo review* of the record that the applicant is ineligible for temporary resident status because he has been convicted of three misdemeanors and he is inadmissible to the United States.¹

The aforementioned FBI report reveals that on July 25, 1992, the applicant was arrested by the Los Angeles Police Department and charged with *Carrying a Loaded Firearm in a Public Place* ([REDACTED]). The court disposition related to this offense shows that on July 27, 1992, the applicant was convicted of *Carrying a Concealed Weapon on Person* in violation of section 12025(b) of the California Penal Code. The applicant was sentenced to county jail for 30 days and probation for 36 months (Municipal Court of Central Arraignment Courthouse, County of Los Angeles, [REDACTED]). **The maximum term of imprisonment for this offense is not to exceed one year.** Cal. Penal Code § 12025(b) (West 1992). Therefore, this crime is considered to be a misdemeanor offense. *See* 8 C.F.R. § 245a.1(o).

Furthermore, a court disposition in the applicant's record shows that on October 6, 1999 he was arrested for *Driving With .08% or More, By Weight, of Blood Alcohol* in violation of section 23152(b) of the California Vehicle Code. On January 31, 2000, the applicant was convicted of this charge and sentenced to a term of imprisonment in the county jail for 48 hours and probation for 36 months (Municipal Court of L.A. – Metro Branch Judicial District, County of Los Angeles, [REDACTED]). The maximum term of imprisonment for a first violation of this statute is not more than six months. Cal. Vehicle Code § 23536 (West 2000). This conviction constitutes the applicant's third misdemeanor offense. *See* 8 C.F.R. § 245a.1(o).

¹ The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

Finally, the AAO finds that the applicant's conviction for *Receiving Known Stolen Property* in violation of section 496(a) of the California Penal Code renders him inadmissible to the United States for having committed a crime involving moral turpitude.

Section 212(a)(2)(A)(i), 8 U.S.C. § 1182(a)(2)(A)(i), of the Act provides in pertinent part that:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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). It is the “inherent nature of the crime as defined by statute and interpreted by the courts and as limited and described by the record of conviction” and not the facts and circumstances of the particular person's case that determines whether the offense involves moral turpitude. *See, e.g., Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989); *Omagah v. Ashcroft*, 288 F.3d 254, 260 (5th Cir. 2002); *Goldeshtein v. INS*, 8 F.3d 645 (9th Cir. 1993). Neither the seriousness of the criminal offense nor the severity of the sentence imposed is determinative of whether a crime involves moral turpitude. *Matter of Serna*, 20 I&N Dec. 579, 581 (BIA 1992). Although evil intent signifies a crime involving moral turpitude, willfulness in the commission of the crime does not, by itself, suggest that it involves moral turpitude. *Goldeshtein v. INS, supra*.

As stated above, on May 21, 1993, the applicant was convicted of *Receiving Known Stolen Property* in violation of section 496(a) of the California Penal Code. The applicant was sentenced to imprisonment in the county jail for 270 days and probation for three years (Superior Court of California, County of Los Angeles, [REDACTED]).

Section 496 (a) of the California Penal Code (West 1993) provides:

Receiving; knowledge; concealment; punishment. Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, is punishable by imprisonment in a state prison, or in a county jail for not more than one year . However, if the district attorney or the grand jury determines that this action would be in the interests of justice, the district attorney or the grand jury, as the case may be, may, if the value of the property does not exceed four hundred dollars (\$400), specify in the accusatory pleading that the offense

shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year.

U.S. Courts have held that the crime of theft or larceny, whether grand or petty, involves moral turpitude. *See Matter of Scarpulla*, 15 I&N Dec. 139, 140 (BIA 1974)(stating, “It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude . . .”); *Morasch v. INS*, 363 F.2d 30, 31 (9th Cir. 1966)(stating, “Obviously, either petty or grand larceny, i.e., stealing another's property, qualifies [as a crime involving moral turpitude].”) Furthermore, U.S. Courts have held that possession of stolen goods, with knowledge that they are stolen, is a crime involving moral turpitude. *See e.g., Matter of Serna*, 20 I&N Dec. 579, 585 (BIA 1992) at n.10 (It is wrong to perpetuate the harm already inflicted by continuing to possess goods which are known or should be known to be stolen.) Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), due to his conviction for *Receiving Known Stolen Property*, a crime involving moral turpitude. Since the applicant was convicted of this crime when he was over 18 years of age, and he was sentenced to a term of imprisonment for 270 days, he does not qualify for an exception to this ground of inadmissibility.

Therefore, the AAO finds in its *de novo review* that the applicant has been convicted of three misdemeanors. He is ineligible for temporary resident status because of his misdemeanor convictions. 8 C.F.R. § 245a.2(c)(1). No waiver of such ineligibility is available. He is also inadmissible due to his conviction for 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). Section 245A(d)(2)(B)(ii)(I) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(ii)(I), precludes waivers of inadmissibility for aliens convicted of crimes involving moral turpitude. Accordingly, the appeal must be dismissed.

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