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



U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED]  
MSC 06 097 10891

Office: LOS ANGELES

Date: JUL 09 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 if your case was 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 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 (together comprising the I-687 Application). The director denied the application for temporary residence because the applicant had been convicted of a felony offense in the state of California, *to wit*, sale of a counterfeit mark. The director, therefore, concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

The applicant is represented by counsel on appeal. Counsel does not dispute the conviction, but argues that the court, in post-conviction rehabilitation proceedings, reduced the original charge from a felony offense to a misdemeanor offense. Therefore, counsel maintains that the single misdemeanor conviction no longer disqualifies the applicant from temporary residence.<sup>1</sup>

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The

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<sup>1</sup> As discussed *infra*, a felony conviction for a crime involving mortal turpitude that has been reduced to a misdemeanor remains a disqualifying conviction for immigration purposes because of the nature of the conviction, and not because of the distinction between felony and misdemeanor.

inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States for the duration of the requisite period, and that he is otherwise admissible to the United States. Here, the applicant cannot establish that he is otherwise admissible to the United States because the record reveals that he has two convictions for crimes involving moral turpitude, for which no waiver exists.

An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to Lawful Permanent Resident status. 8 C.F.R. § 245a.18(a)(1). "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).

"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 such alien 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).

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) 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 (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A).

Additionally, an applicant who has been convicted of a crime involving moral turpitude (CIMT) is inadmissible, and therefore ineligible for temporary resident status. But, an alien with *one* CIMT is not inadmissible if he or she meets the petty offense exception.<sup>2</sup> See 8 U.S.C. § 1182(a)(2)(A)(ii).

The record contains court documents and an FBI Identification Record that reflect the applicant has two convictions in the county of Los Angeles, California:

- A March 17, 1997 conviction for a violation of section 350(A)(2) of the California Penal Code, *Sale of Counterfeit Mark in Excess of \$1000* [REDACTED]. The court documents indicate that this offense was charged as a felony. The court suspended the imposition of sentence, ordered the applicant to serve 5 years probation, pay restitution in the amount of \$3228 and a fine of \$200, and perform 200 hours of community service. Thereafter on October 1, 2003, the court granted the applicant's motion to dismiss the charges pursuant to section 1203.4 of the California Penal Code and also ordered that the criminal information be amended to list the original charge as a misdemeanor offense.
- A July 19, 2006 conviction for three counts of violating Title 31 U.S.C. § 5324 -- *Structuring Cash Transactions to Evade Reporting Requirements*. The applicant was sentenced to 24 months probation and ordered to pay a fine of \$500 and a special assessment of \$300. The record does not identify a court docket number.

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<sup>2</sup> A CIMT will meet the petty offense exception if "the maximum penalty possible for the crime of which the alien was convicted . . . did not exceed imprisonment for one year and . . . the alien was not sentenced to a term of imprisonment in excess of 6 months." *Lafarga v. INS*, 170 F.3d 1213, 1214-15 (9th Cir. 1999) (quoting 8 U.S.C. § 1182(a)(2)(A)(ii)(II)); see also *Garcia-Lopez v. Ashcroft*, 334 F.3d 840, 843-46 (9th Cir. 2003).

The AAO has reviewed the statutory provisions and the relevant case law of the Ninth Circuit Court of Appeals, the jurisdiction in which this case arises. The AAO concludes that a conviction under §350(A) of the California Penal Code, as well as a conviction under 31 U.S.C. § 5324 are both convictions for crimes involving moral turpitude because both involve the element of fraud. *See Navarro-Lopez v. Gonzales*, 503 F.3d 1063, 1078 (9<sup>th</sup> Cir. 2007) (en banc) (affirming that crimes may either be fraudulent or base, vile, and depraved to be CIMT's); *Notash v. Gonzales*, 427 F.3d 693 (9<sup>th</sup> Cir. 2005).

Additionally, the AAO notes that a conviction for violating 31 U.S.C. § 5324 carries a maximum sentence of five years incarceration, and thus, by definition, is considered a felony offense under the federal definition of a felony for immigration purposes.

The applicant has two convictions for crimes involving moral turpitude. He is therefore ineligible for temporary resident status pursuant to 8 U.S.C. §1255a(4)(B); 8 C.F.R. § 245A.4(B). No waiver of such ineligibility is available. 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.