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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED]
XPW-90-023-01050

Office: TUCSON

Date: JUN 15 2009

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:

SELF-REPRESENTED

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 adjustment from temporary to permanent resident status was denied by the Director, Tuscon, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director found the applicant to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The director determined that there is no waiver for this ground of inadmissibility, and denied the application.

On appeal, the applicant asserts that she pled guilty to something she did not do. The applicant states that she completed community service and paid the court's fees and fines. The applicant contends that prior to this incident and since this incident she had been a model resident.

An applicant for adjustment of status to permanent residence must establish that she is admissible to the United States as an immigrant, and has not been convicted of any felony or three or more misdemeanors committed in the United States. Section 245A(b)(1)(C) of the Act, 8 U.S.C. § 1255a(b)(1)(C).

The record contains a court disposition that reveals on November 17, 2003, the applicant pled guilty to *theft* in violation of section 13-1802(A)(1) of the Arizona Revised Statutes (Superior Court of Santa Cruz County, State of Arizona, Case No. CR-03-187). The Court found the applicant guilty of a Class 1 Misdemeanor. The maximum term of imprisonment for a Class 1 Misdemeanor is six months. *Ariz. Rev. Stat. Ann. § 13-707 (West 2003)*. This offense is considered a misdemeanor for immigration purposes pursuant to the applicable regulation at 8 C.F.R. § 245a.1(o). A single misdemeanor conviction does not render the applicant ineligible for adjustment to permanent residence. *See* Section 245A(b)(1)(C) of the Act, 8 U.S.C. § 1255a(b)(1)(C).

The next issue to be addressed is whether the applicant's conviction for theft renders her inadmissible to the United States for having been convicted of a crime involving moral turpitude pursuant to section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A).¹

Section 212(a)(2)(A) of the Act states in pertinent part:

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

¹ There is no wavier available for this ground of inadmissibility. Section 245A(d)(2)(B)(ii)(I) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(ii)(I).

- (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.
- (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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). 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].")

Although the applicant has been convicted of a crime involving moral turpitude, the record reflects that she qualifies for a petty offense exception to this ground of inadmissibility under Section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II). As previously stated, the applicant was found guilty of a Class 1 Misdemeanor for which the maximum term of imprisonment is six months. Ariz. Rev. Stat. Ann. § 13-707 (West 2003). The record indicates that the applicant was fined and placed on probation for a period of one year. Because the maximum penalty possible for the applicant's conviction did not exceed imprisonment for one year and she was not sentenced to a term of imprisonment in excess of six months, she qualifies for the petty offense exception. Therefore, she is not inadmissible to the United States for having been convicted of a crime involving moral turpitude.

The AAO concludes that the applicant is not inadmissible to the United States. Further, she has been convicted of only one misdemeanor. She is therefore not ineligible for adjustment to permanent resident status. The denial of permanent residence is withdrawn on this basis. The application for adjustment of status from lawful temporary to permanent resident is approved contingent upon required criminal and background checks.

ORDER: The appeal is sustained.