

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

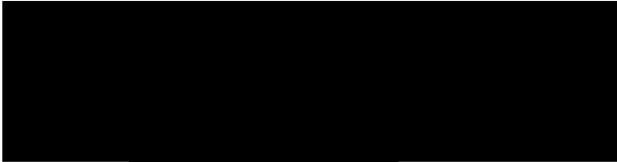
**PUBLIC COPY**

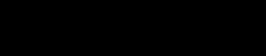
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529 - 2090



**U.S. Citizenship  
and Immigration  
Services**

L1

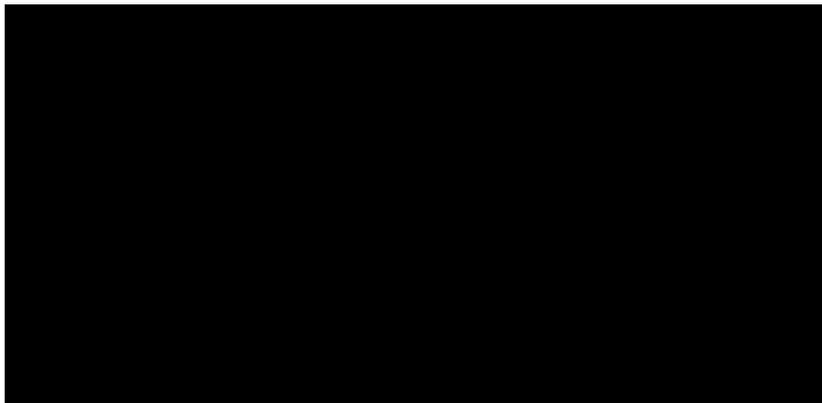


FILE:   
SRC-05-044-51506

Office: TEXAS SERVICE CENTER

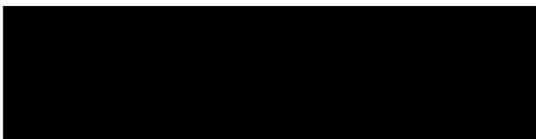
Date: APR 06 2010

IN RE: Applicant:



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

ON BEHALF OF APPLICANT:



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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application to adjust to permanent resident status pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a, was denied by the acting director of the Texas Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The acting director determined that the applicant is ineligible to adjust from temporary to permanent resident because she has failed to establish that she does not have disqualifying criminal convictions.

Counsel has filed a motion to reopen the proceeding, in which she asserts that the applicant has two misdemeanor convictions, which do not render her ineligible to adjust from temporary to permanent resident status.<sup>1</sup> However, motions to reopen a proceeding are not permitted for permanent residence applications filed under section 245A of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255(a). *See* 8 C.F.R. § 103.5(b). Therefore, the AAO will treat counsel's motion to reopen as an appeal. The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>2</sup>

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(c)(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).

---

<sup>1</sup> The applicant has filed one Motion to Reopen/Reconsider for two denied applications, the I-687 application and the I-698 application. Since each application or petition that is denied requires its own motion with separate fees, the AAO will here adjudicate only the appeal of the denial of the I-698 application. Regarding the I-698 application, although the record reveals that prior counsel did not timely file a motion to reopen/reconsider, the applicant is not prejudiced by the actions of counsel since the AAO will conduct a *de novo* review, as stated below. Regarding the I-687, even if the appeal of that application were adjudicated here, it would not be sustained. The I-687 application was denied on the basis of abandonment after a fingerprint notice and request for evidence were both returned as undeliverable after being sent to the applicant's address of record.

<sup>2</sup> 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 (9<sup>th</sup> Cir. 1991). The AAO's *de novo* authority has long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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 Nationality Act (Act).

Additionally, an applicant who has been convicted of a crime involving moral turpitude (CIMT) is inadmissible, and therefore ineligible for permanent resident status. See Immigration and Nationality Act, (Act), as amended, § 212(a)(2)(A)(i)(I). But, an alien with one CIMT is not inadmissible if he or she meets the petty offense exception. See 8 U.S.C. § 1182(a)(2)(A)(ii). 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). For the purpose of the petty offense exception, “the maximum penalty possible’ . . . refers to the statutory maximum sentence, not the guideline sentence to which the alien is exposed.” *Mendez-Mendez v. Mukasey*, 525 F.3d 828, 835 (9th Cir. 2008) (offense of bribery of a public official did not qualify for petty offense exception where statutory maximum for offense was 15 years).

The AAO has reviewed all of the documents in the file, including the criminal records and the statutes under which the applicant was arrested and/or convicted. The record contains court documents that reveal the following criminal history:

- On December 6, 1986, the applicant was arrested for a violation of section 484(A) of the California penal code (PC), *shoplifting*. The final disposition of this charge is unknown. The applicant submitted “no record” statements from the Los Angeles Police Department and the Superior Court of California, County of Los Angeles (Los Angeles Police Department, [REDACTED])
- On September 1, 1988, the applicant was arrested for a violation of section 487(1) (PC), *grand theft: property*, section 484(E)(1) (PC), *petty theft: acquiring credit card without consent*, and section 484(G)(A) (PC), *theft by forgery/invalid credit card*. On May 11, 2006, the court added a violation of section 415 (PC), *disturbing the peace*, and on the same date the applicant pleaded *nolo contendere* to a violation of that section, a misdemeanor. Also on that date, the remaining counts were dismissed. (Municipal Court of Van Nuys Courthouse Judicial District, County of Los Angeles, [REDACTED])
- On October 11, 1990, the applicant was arrested for a violation of section 165.50 of the New York penal code (PC), *criminal possession of stolen property*. On September 6, 2006, the court reduced the charge to a violation of section 240.20 (PC), *disorderly*

*conduct*, and on the same date the applicant pleaded *guilty* to a violation of that section. According to Article 10 of the New York Penal Code, the maximum possible sentence for a violation is 10 days.<sup>3</sup> (District Court of the County of Suffolk, [REDACTED])

- On January 16, 1998, the applicant was arrested for a violation of section 32.21(e) of the Texas penal Code (PC), *forgery government financial instrument*. The record reflects that on January 20, 1998, the applicant pleaded guilty to the charge, a felony in the third degree, and was sentenced to 5 years probation and a fine of \$750.00. On February 14, 2001 the case was deferred. (180<sup>th</sup> District Court Houston, [REDACTED])
- On May 16, 1986, the applicant was arrested in Los Angeles on a charge of *disorderly conduct – soliciting lewd act*. There is no further information regarding this charge.

The issue in this case is whether the applicant has established that she is not ineligible for adjustment of status on the basis of multiple criminal convictions. Declarations by an applicant regarding her criminal record are subject to verification of facts by United States Citizenship and Immigration Services (USCIS). The applicant must agree to fully cooperate in the verification process. Failure to assist USCIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.3(g)(5). The applicant failed to submit evidence to establish the criminal dispositions of three of her arrests, as requested. This is another basis to deny the application.

The next issue to address in this proceeding is whether the applicant has been convicted of a felony, which renders her ineligible for adjustment to permanent resident status. The applicant was convicted of a violation of section 32.21(e) of the Texas Penal Code (PC), *forgery government financial instrument*.

Section 32.21 of the Texas penal code states:

Sec. 32.21. FORGERY.

(a) For purposes of this section:

(1) "Forge" means:

(A) to alter, make, complete, execute, or authenticate any writing so that it purports:

---

<sup>3</sup> Although the offense of disorderly conduct is considered a "violation" under New York law, it is considered a misdemeanor offense for purposes of analysis under the Immigration and Nationality Act. As noted above, "misdemeanor" means a crime committed in the United States punishable by imprisonment for a term of *one year or less*, regardless of the term such alien actually served. 8 C.F.R. § 245a.1(p). A "violation" in New York carries a maximum 15 day term of imprisonment, and therefore qualifies as a "misdemeanor" for immigration purposes.

- (i) to be the act of another who did not authorize that act;
  - (ii) to have been executed at a time or place or in a numbered sequence other than was in fact the case; or
  - (iii) to be a copy of an original when no such original existed;
- (B) to issue, transfer, register the transfer of, pass, publish, or otherwise utter a writing that is forged within the meaning of Paragraph (A); or
- (C) to possess a writing that is forged within the meaning of Paragraph (A) with intent to utter it in a manner specified in Paragraph (B).
- (2) "Writing" includes:
- (A) printing or any other method of recording information;
  - (B) money, coins, tokens, stamps, seals, credit cards, badges, and trademarks; and
  - (C) symbols of value, right, privilege...
- (e) An offense under this section is a felony of the third degree if the writing is or purports to be:
- (1) part of an issue of money, securities, postage or revenue stamps;
  - (2) a government record listed in Section 37.01(2)(C); or
  - (3) other instruments issued by a state or national government or by a subdivision of either, or part of an issue of stock, bonds, or other instruments representing interests in or claims against another person.

The statute clearly states that an offense under section 32.21(e) PC is a felony. The applicant claims that the charge of Forgery was dismissed by the court. The record reflects that the applicant entered a plea of guilty to the charge on January 20, 1998 and the disposition was deferred. A deferred adjudication is considered a conviction under section 245A of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1255a. The applicant meets the two prong test outlined in Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A). First, she entered a plea of guilty. Second, the judge ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Specifically, the judge ordered the applicant serve 5 years probation and pay a fine in the amount of \$750. Clearly, the applicant has been convicted under the statutory definition of this term provided at section 101(a)(48)(A)(i) of the Act.

As stated above, 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. Thus, the applicant would be ineligible for adjustment to permanent resident status due to her felony conviction. *See* 8 C.F.R. § 245a.3(c)(1).

Beyond the decision of the director, the applicant is inadmissible because she has two convictions for crimes involving moral turpitude, i.e., forgery and theft. In general, crimes involving fraud, deceit, and theft are considered to be crimes involving moral turpitude. While crimes that have a specific intent to defraud as an element have always been found to involve moral turpitude, certain crimes have been found to be inherently fraudulent and involve moral turpitude even though they can be committed without a specific intent to defraud. *See Matter of*

*Seda*, 17 I. & N. Dec. 550 (BIA 1980)(Georgia), *Animashaun v. INS*, 990 F.2d 234 (5th Cir. 1993), (Alabama Criminal Code), and *Balogun v Ashcroft*, 270 F. 3d 274 (5<sup>th</sup> Cir. 2001), (forgery is a CIMT); *Morales-Carrera v. Ashcroft*, 74 F3d. Appx. 324 (5<sup>th</sup> Cir. 2003), held that a conviction for forging proof of financial responsibility under the Texas Transportation Code, section 601.196, was a CIMT as the offense involved forgery and was fraudulent in nature.

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she is admissible to the United States under the provisions of section 245A of the Act. Based on the evidence of record, the applicant has failed to establish that she is admissible; therefore, she failed to establish she is eligible for adjustment to permanent resident status.

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