

identifying information to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



L1

DATE: **MAY 04 2011** Office: NATIONAL BENEFITS CENTER FILE: 

IN RE: Applicant: 

PETITION: 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:  


**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status was terminated by the Director, Northern Service Center. The director terminated the applicant's temporary resident status finding that the applicant was inadmissible to the United States as a person who is infected with a communicable disease of public health significance. The applicant tested positive for human immunodeficiency virus (HIV) antibodies. The director noted that HIV was defined as a communicable disease pursuant to 42 C.F.R. § 34.2(b)(4), however, persons infected with HIV may, upon meeting certain conditions, have such excludability waived. The applicant filed a waiver which was subsequently denied. The applicant filed a timely appeal of the director's decision to the Administrative Appeals Office (AAO). On March 17, 1997, the AAO dismissed the appeal.

On November 2, 2009, the Department of Health and Human Services (HHS) published a final rule in the Federal Register, removing HIV infection from the list of illnesses that make a foreign national inadmissible. The rule took effect on January 4, 2010. On August 18, 2010, the applicant filed a motion to reopen the director's decision to terminate his temporary resident status. The motion will be granted and the application will be remanded. As the basis for the termination of the applicant's temporary resident status is no longer valid, the applicant shall be permitted to file a Form I-698 Application to Adjust to Permanent Resident Status to be adjudicated on the merits.

Additionally, the AAO notes the following. The record contains court documents that demonstrate the following related to the applicant's criminal record:

The applicant was convicted on January 24, 1992 of violating section 167.007 of the Oregon Revised Statutes, *Prostitution*, a misdemeanor (Case no. [REDACTED]). Therefore, one issue in this case is whether the applicant's conviction for prostitution constitutes a crime involving moral turpitude (CIMT), which would render the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and therefore ineligible for legalization benefits.

Moral turpitude refers generally to conduct that is inherently base, vile or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general. *Matter of L-V-C-*, 22 I&N Dec. 594, 603 (BIA 1999). Moral turpitude has been defined as an act which is per se morally reprehensible and intrinsically wrong, so it is the nature of the act itself and not the statutory prohibition of it which renders a crime one of moral turpitude. *Matter of Franklin*, 20 I&N Dec. 867, 868 (BIA 1994).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 61 5, 61 7-1 8 (BIA 1992), that:

Moral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general. . . .

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present.

However, where the required *mens rea* may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The AAO finds that prostitution is an inherently base act and that the applicant's convictions for prostitution, is a conviction for a crime involving mortal turpitude (CIMT).

An applicant who has been convicted of a CIMT is inadmissible, and therefore ineligible for permanent resident status. However, an alien with one CIMT is not inadmissible if he or she meets the petty offense exception, which requires that the maximum penalty possible for the crime of which the alien was convicted did not exceed imprisonment for one year, and that the alien was not sentenced to a term of imprisonment in excess of 6 months. 8 U.S.C. § 1182(a)(2)(A)(ii). The maximum penalty possible for the crime of prostitution in Oregon, a class A misdemeanor, is imprisonment for one year. The applicant was sentenced to one year of probation and community service. Therefore, he qualifies for the petty offense exception. Therefore, the applicant's CIMT conviction is not grounds for termination of his temporary resident status because it does not render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I).

Accordingly, the applicant's motion will be granted. The director shall continue the adjudication of the application for temporary resident status and permit the applicant the opportunity to file Form I-698 Application for Adjustment to Permanent Resident Status.

**ORDER:** The motion is granted and the application remanded for adjudication in accordance with this decision.