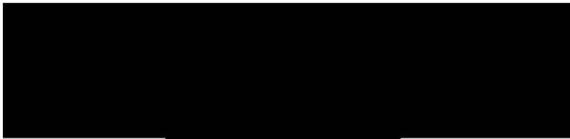


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Office: LOS ANGELES

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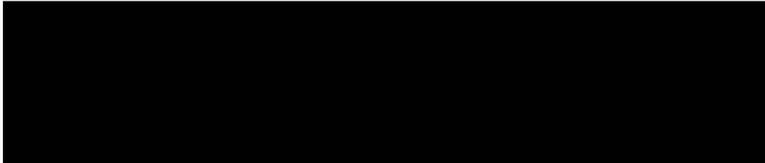
Applicant:



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:



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 your case 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** On February 13, 2006, 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, or *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 District Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was convicted of the following crimes on the following dates:

1. May 19, 1992, in the Superior Court of California, in Riverside County, California, for petty theft, under California Penal Code §§ 484 and 490.5; and,
2. August 24, 1993, in the Superior Court of California, in Riverside County, California, for petty theft, under California Penal Code §§ 484 and 490.5.

On December 28, 2005, the director sent the applicant a Notice of Intent to Deny (NOID) the application, stating that the applicant was inadmissible because her convictions were both crimes involving moral turpitude. In response, counsel asserted that the applicant was only convicted of two simple shoplifting crimes that amounted to simple misdemeanors. Counsel asserted that the two items taken by the applicant were of very low value. Counsel asserted that to deny the application went against public policy because the definition of crime involving moral turpitude results in the classification of most misdemeanors as such.

The director denied the application, determining that the applicant is inadmissible for convictions of two crimes involving moral turpitude.

On appeal, counsel for the applicant asserts that the director failed to take public policy into account and that the potential harm to the applicant and her family if the application were denied outweighs the potential harm to the United States government and that granting the application would serve the public interest.

LIFE Act applicants are subject to specific criminal provisions set forth in the LIFE Act. They are also subject to the grounds of inadmissibility under section 212(a) of the Immigration and Nationality Act (the Act).

Section 212(a)(2)(A)(i)(I) of the Act describes classes of individuals who are not admissible to the United States:

(2) Criminal and related grounds

(A) Conviction of certain crimes

- (i) In general, except as provided in clause (ii), any 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.

Both of the applicant's convictions are classified as misdemeanors, which carry a maximum possible penalty of no more than one year imprisonment. For purposes of LIFE Act eligibility, the applicant has been convicted of two misdemeanors. She is not ineligible for adjustment of status under the specific LIFE Act criminal provisions because she has not been convicted of a felony and has not been convicted of three misdemeanors. However, her two convictions for shoplifting each constitute a crime involving moral turpitude. She is therefore inadmissible and ineligible for adjustment of status under INA § 212(a)(2)(A)(i).

The term crime involving moral turpitude is not defined in INA § 212(a)(2)(A)(i), but courts have held that moral turpitude refers generally to conduct which is inherently base, vile, or depraved, contrary to the accepted rules of morality and the duties owed between man and man, either one's fellow man or society in general. Matter of Franklin, 20 I&N Dec. 867, 868 (BIA 1994).

The 9<sup>th</sup> Circuit Court of Appeals, the circuit in which this case arises, has held that petty theft offenses under California Penal Code §§ 484 and 488 are crimes involving moral turpitude. *Flores-Juarez v. Mukasey*, 530 F.3d 1020 (9<sup>th</sup> Cir. 2008); *Esparza-Ponce*, 193 F.3d 1133 (9<sup>th</sup> Cir. 1999). The Board of Immigration Appeals (BIA) has also held that theft offenses are crimes involving moral turpitude. See e.g. *Matter of De La Nues*, 18 I & N Dec. 140, 141 (BIA 1981), *Matter of Westman*, 17 I & N Dec. 50 (BIA 1979).<sup>1</sup>

Therefore, the applicant has been convicted of two crimes involving moral turpitude, is inadmissible under INA § 212(a)(2)(A)(i), and is ineligible for permanent resident status under section 1104 of the LIFE Act.

Counsel asserts that it denying the application goes against public policy. The Immigration and Nationality Act dictates that an individual convicted of a crime involving moral turpitude is inadmissible to the United States. The AAO has no authority to approve an application on the basis of equitable or humanitarian grounds or as a matter of public policy.

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<sup>1</sup> Because the applicant has been convicted of two crimes involving moral turpitude, she is not eligible for the petty offense exception at INA § 212(a)(2)(A)(ii)(II).

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