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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**



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Date: **JUN 21 2011**

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE: 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. 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 termination of the applicant's temporary resident status by director of the California Service, pursuant to the terms of the CSS/Newman Settlement Agreements, is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reveals that on March 3, 2010, the director terminated the applicant's temporary resident status, finding that the applicant was not eligible for such status, because the applicant was convicted of a controlled substance violation. *See* section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II).

On appeal, counsel for the applicant asserts that the termination of the applicant's temporary resident status was in error because she asserts that the applicant has not been convicted of a controlled substance violation. The applicant has not submitted any further evidence on appeal.¹ The entire record was reviewed and considered in rendering this decision.² The AAO has considered counsel's assertions, 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.³

The temporary resident status of an alien may be terminated upon the determination that the alien was ineligible for temporary residence. Section 245A(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(b)(2)(A), and 8 C.F.R. § 245a.2(u)(i).

Section 212(a)(2) of the Act provides, in pertinent part, that:

(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, or (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)),

¹ The documents/witness statements that the applicant submits on appeal have previously been submitted into the record.

² The record reveals that the applicant's FOIA request, number [REDACTED] was processed on March 11, 1999.

³ The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

is inadmissible.

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 Act, 8 U.S.C. § 1101(a)(48)(A).

The AAO finds that the applicant is ineligible for temporary resident status for violating a law relating to a controlled substance. 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 June 22, 1997, the applicant was charged with a violation of the Nevada criminal code, *drinking alcoholic beverage in public place*. On June 22, 2004 the applicant pleaded guilty to the charge, a misdemeanor. (Municipal Court of the City of North Las Vegas, case number [REDACTED])
- On June 19, 2004, the applicant was charged with two violations of the Nevada Revised Statutes (NRS), as follows: section 453.3395, *trafficking in controlled substance* and section 453.336, *conspiracy to possess a controlled substance*. The record contains a declaration of arrest⁴, which reveals that the arrest concerned the possession, by the applicant and several others, of a total of eight or nine pounds of cocaine, with the intent to sell. On December 27, 2004, the court amended the complaint, reducing the charge of *trafficking in controlled substance* to the lesser charge of 454.351(NRS) *possession of dangerous drugs not to be introduced into interstate commerce*. On that date, the applicant pleaded guilty to the lesser charge, a misdemeanor. Also on that date, the court dismissed the remaining charge. The applicant was sentenced to six months in jail, which sentence was suspended, and ordered to pay a fine. (Las Vegas Township, Justice Court, case number [REDACTED]).

In denying the I-687 application, the director determined that the applicant's plea agreement equated to a criminal conviction for violating a law relating to a controlled substance, rendering the applicant ineligible to adjust to temporary resident status. Counsel contends that the charge of *possession of dangerous drugs not to be introduced into interstate commerce*, to which the applicant pleaded guilty, does not relate to controlled substances because it "only covers drugs regulated by the Federal Food, Drug and Cosmetic Act". Counsel has not cited any authority in support of her position.

⁴The declaration of arrest was submitted by prior counsel, in response to an April 7, 2006 request for certified copies of the complaint and final disposition for any arrest of the applicant.

Section 454.351(NRS) provides, "Any person within this State who possesses, procures, obtains, processes, produces, derives, manufactures, sells, offers for sale, gives away or otherwise furnishes any drug which may not be lawfully introduced into interstate commerce under the Federal Food, Drug and Cosmetic Act is guilty of a misdemeanor." The plain reading of the statute reveals that it is a very broad provision which cannot be said to exclude possession of controlled substances. The phrase "relating to a controlled substance," contained in section 212(a)(2)(A)(i)(II) of the Act is not defined in the Act, but the "relating to" concept has a broad ordinary meaning, namely, "to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with." *Morales v. Trans World Airlines Inc.*, 504 U.S. 374, 383 (1992) (quoting *Black's Law Dictionary* 1158 (5th ed. 1979)). Further, the drug involved in the applicant's arrest was cocaine, a controlled substance. Therefore, the AAO agrees with the director that the applicant's agreement to plead guilty to the charge of *possession of dangerous drugs not to be introduced into interstate commerce* equated to a criminal conviction for violating a law relating to a controlled substance, rendering the applicant ineligible to adjust to temporary resident status. There is no waiver available to the applicant.⁵

The record indicates that on November 29, 1976, deportation proceedings were initiated against the applicant under the name of [REDACTED]. The status of these proceedings is not known.

The AAO finds that the applicant is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for violating a law relating to a controlled substance, and is ineligible for temporary resident status under section 245A of the Act on this basis. As the applicant has not overcome the basis for the termination of status, the appeal must be dismissed.

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

⁵ Pursuant to section 212(h) of the Act, the Attorney General may, in his discretion, waive the application of . . . [section 212(a)(2)(A)(i)(II)] insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana.