

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

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

LC

PUBLIC COPY



FILE:



Office: VERMONT SERVICE CENTER

Date:

JUL 05 2007

[EAC 99 222 51954]

IN RE:

Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

Cindy M. Gomez for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was initially granted and subsequently withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the appeal will be sustained.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant had been convicted of a crime involving moral turpitude committed in the United States.

On appeal, applicant's previous and current counsel acknowledge that the applicant pled guilty and was convinced of the crime of endangering the welfare of a child, a misdemeanor. Counsels state that the client has had no prior involvement with the criminal court system, that he appeared in court when he was ordered to appear and does not pose a risk of flight. Counsels further state that the applicant's family needs him to remain in this country and depends upon him for support.

Citizenship and Immigration Services may withdraw TPS if the alien was not eligible at the time the status was granted, or if he or she becomes ineligible for TPS. 8 C.F.R. § 244.14(a)(1).

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:

(i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;

(ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. *See* Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines “felony” and “misdemeanor:”

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 section 244 of the Act, the crime shall be treated as a misdemeanor.

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 the term "felony" of this section.

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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record shows that on May 2, 2006, in the District Court of Nassau County – Hempstead in the State of New York, Docket Number [REDACTED], the applicant pled guilty and was convicted of endangering the

welfare of a child, Penal Law 260.10, a misdemeanor. A second charge of sexual abuse was “covered by PL 260.10” and not prosecuted. The applicant was sentenced to 60 days of imprisonment, a final order of protection against him was issued for a two year period, he was placed on probation for three years, and ordered to pay \$160 in fines and costs.

Pursuant to New York Penal Law 260.10, endangering the welfare of a child is a Class A misdemeanor subject to a definite sentence and that when a such a sentence is imposed, the term shall be fixed by the court and not exceed one year.

A crime involving moral turpitude is 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. *Jordan v. De George*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951). See *Matter of R-*, 1 I&N Dec. 540 (BIA 1943); *Matter of M-*, 2 I&N Dec. 721 (BIA 1982); *Matter of Leyva*, 16 I&N Dec. 118 (BIA 1977); *Matter of Frentescu*, 18 I&N Dec. 244, 245 (BIA 1982). The record reflects that the applicant was convicted of a crime involving moral turpitude.

However, section 212(a)(2)(A)(ii)(II) of the Act provides for an exception to inadmissibility of an alien convicted of a single crime of moral turpitude, where the maximum penalty possible for the crime did not exceed imprisonment for one year and the alien was not sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was ultimately executed).

The record shows that the applicant was convicted of a misdemeanor, the maximum penalty possible for the crime did not exceed imprisonment for one year, and that he was not sentenced to a term of imprisonment in excess of six months. Therefore, the applicant qualifies under the exception provided by law. Section 212(a)(2)(A)(ii)(II) of the Act.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this burden.

ORDER: The director’s decision is withdrawn and the appeal is sustained.