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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N. W.
Washington, DC 20536



File:  Office: California Service Center Date: **DEC 23 2003**

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: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California, Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who indicated on her application that she entered the United States in August 1985 without a lawful admission or parole. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because he found that the applicant had been convicted of a felony.

On appeal, the applicant stated that she had been convicted of a single felony and that she had been complying with the terms of her probation.

An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. Section 244(c)(2)(B)(i) of the Act.

"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. 8 C.F.R. § 244.1.

"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. 8 C.F.R. § 244.1.

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 most commonly accepted definition of 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).

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible. Section 212(a)(6)(C) of the Act.

The record reveals that on October 17, 2000, the applicant pled nolo contendere in the Superior Court of Los Angeles, Southwest Judicial District, to a felony charge of grand theft in violation of section 487(a) PC. (Docket #YA0440110.) Imposition of sentence was suspended and the applicant was placed on probation for a period of three years.

The applicant stated on appeal that she was in the "process of having a conviction changed to that of a misdemeanor . . . she would then be convicted of only one misdemeanor." The applicant stated that proof of the reduction would be submitted; however, as of this date no further evidence has been provided. Regardless, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not reduce a conviction on the merits are of no effect in determining the status of an alien's conviction for immigration purposes. See *Matter of Roldan*, I.D. 3377 (BIA 1999).

The applicant is ineligible for temporary protected status due to her felony conviction. 8 C.F.R. § 244.4(a). In addition, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act because grand theft is considered a crime involving moral turpitude. *Matter of Scarpulla*, 15 I&N Dec. 139 (BIA 1974). There is no waiver available for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

Finally, the record reveals that the applicant fraudulently indicated on Part 4, Line 2, of her application for TPS that she had not been convicted of a felony. This misrepresentation of a material fact in an application for immigration benefits renders the applicant inadmissible under section 212(a)(6)(C) of the Act. While this ground of inadmissibility may be waived, the applicant would remain ineligible under 8 C.F.R. § 244.4(a) and inadmissible under section 212(a)(2)(A)(i)(I) of the Act as discussed above.

The burden of proof is upon the applicant to establish that she meets the above requirements. The applicant's statement, on appeal, does not overcome the adverse evidence in the record. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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 failed to meet this burden.

ORDER: The appeal is dismissed.