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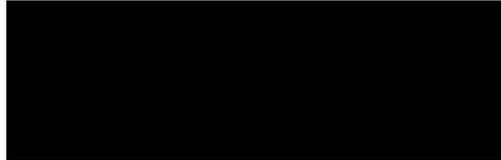
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

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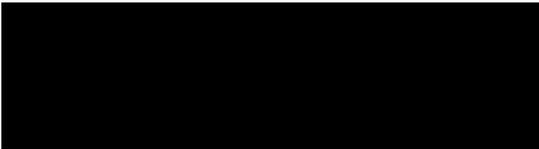
Applicant:



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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and 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 is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director determined that the applicant was ineligible for TPS because: (1) he had been convicted of two or more misdemeanor offenses committed in the United States; (2) he failed to establish continuous residence since February 13, 2001; and (3) he failed to establish continuous physical presence since March 9, 2001. The director, therefore, denied the application.

On appeal, counsel submits additional evidence of the applicant's residence in the United States and asserts that the applicant is eligible for TPS even with the misdemeanor convictions. He further asserts that the criminal convictions all arose on the same date and circumstance and, thus, were performed in furtherance of a single criminal episode. While counsel states that a complete brief on this issue will be filed separately and apart from the appeal, to date, no brief or additional evidence has been provided. Therefore, the record shall be considered complete.

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

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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.

The term *continuously resided* as used in 8 C.F.R. § 244.1 means residing in the United States for the entire period specified in the regulations and since February 13, 2001. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The term *continuously physically present* as used in 8 C.F.R. § 244.1 means actual physical presence in the United States for the entire period specified in the regulations and since March 9, 2001. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General [now, the Secretary of the Department of Homeland Security (the Secretary)] finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

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 felony or misdemeanor.

Section 212(a)(2) of the Act, 8 U.S.C. § 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

- (A)(i) 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...

The record reflects the following:

1. On November 2, 2000, in the Criminal Court, Prince William County, Virginia, Case No. [REDACTED] the applicant entered a plea of guilty to the reduced charge of petit larceny, a misdemeanor. The court found him guilty of the charge, jail sentence of 3 months imposed with 3 months suspended, he was placed on probation for a period of one year, and was required to make restitution.
2. On November 2, 2000, in the Criminal Court, Prince William County, Virginia, Case No. [REDACTED] the applicant entered a plea of guilty to the reduced charge of petit larceny, a misdemeanor. The court found him guilty of the charge, he was placed on probation for a period of one year, and was required to make restitution.
3. On November 2, 2000, in the Criminal Court, Prince William County, Virginia, Case No. [REDACTED] the applicant entered a plea of guilty to the reduced charge of petit larceny, a misdemeanor. The court found him guilty of the charge, jail sentence of 3 months imposed with 3 months suspended, he was placed on probation for a period of one year, and was required to make restitution.
4. On November 2, 2000, in the Criminal Court, Prince William County, Virginia, Case No. [REDACTED] the applicant entered a plea of guilty to the reduced charge of petit larceny, a misdemeanor. The court found him guilty of the charge, jail sentence of 3 months imposed with 3 months suspended, and he was placed on probation for a period of one year.

While the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to his removability under section 237 of the Act, this determination has no bearing on his eligibility for TPS or his admissibility under section 212(a) of the Act. According to the court dispositions, the applicant was charged with four separate offenses under four separate case numbers, he clearly pled guilty to four separate crimes, and the court ordered four separate punishments. Therefore, the applicant had been convicted of four separate and distinct misdemeanor offenses.

Theft or larceny, whether grand or petty, is a crime involving moral turpitude. *Matter of Scarpulla*, 15 I&N Dec. 139 (BIA 1974); *Morasch v. INS*, 363 F.2d 30 (9th Cir. 1966).

Accordingly, the applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his four misdemeanor convictions. He is also inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, based on his convictions of crimes involving moral turpitude. There is no waiver available to an alien found inadmissible under this section. *See* 8 C.F.R. § 244.3(c)(1). Nor is there a waiver available for convictions of a felony or two or more misdemeanors committed in the United States.

The applicant, on appeal, submits additional documents in an attempt to establish his qualifying residence and physical presence in the United States described in 8 C.F.R. § 244.2(b) and (c). These documents, however, do not mitigate the fact that the applicant is statutorily ineligible for TPS pursuant to sections 244(c)(2)(B)(i) and 212(a)(2)(A)(i)(I) of the Act. Accordingly, the director's decision to deny the application will be affirmed.

The burden of proof is upon the applicant to establish that he 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.