

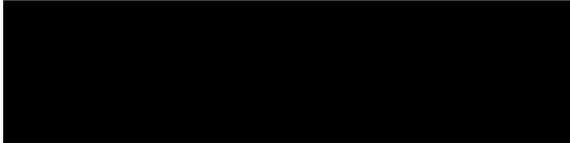
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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



FILE: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: **NOV 03 2004**

IN RE: Applicant: [Redacted]

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 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, California 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 she had been convicted of two or more misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant asserts that her misdemeanor convictions have been expunged. While the applicant indicates that she is sending a brief and/or evidence within 30 days, to date, no additional statement or 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.

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 March 29, 1989, in the Municipal Court of Los Angeles, County of Los Angeles, California, Case [REDACTED] the applicant was convicted of the misdemeanor offense of theft of property, in violation of 484(a) PC (arrest date March 8, 1989). She was placed on probation for a period of 12 months, under the terms and condition that she serves 5 days in the county jail, perform 50 hours of community service, and pay \$372.50 in fines and costs. On April 16, 2001, the court ordered the plea, verdict, or finding of guilt set aside and vacated, a plea of not guilty was entered, and the case was dismissed pursuant to 1203.4 PC.
2. On June 3, 1992, in the Municipal Court of Los Angeles, Criminal Judicial District, County of Los Angeles, California, [REDACTED] the applicant was convicted of the misdemeanor offense of grand theft-property, in violation of 487 PC (arrest date May 9, 1992). She was placed on probation for a

period of 36 months, under the terms and conditions that she serves 15 days in the county jail, pay a fine of \$450 plus state penalty fund assessment of \$561, and perform 200 hours of community service. On March 13, 2001, the court ordered the plea, verdict, or finding of guilt set aside and vacated, a plea of not guilty was entered, and the case was dismissed pursuant to 1203.4 PC.

3. On May 18, 1995, in the Municipal Court of Los Angeles, Glendale Judicial District, County of Los Angeles, California, [REDACTED] the applicant was convicted of the misdemeanor offense of theft of property, in violation of 484(a) PC. She was placed on probation for a period of 2 years, and ordered to pay \$945 in fines and costs. On January 30, 2001, the court ordered the plea, verdict, or finding of guilt set aside and vacated, a plea of not guilty was entered, and the case was dismissed pursuant to 1203.4 PC.

4. On November 13, 1996, in the Municipal Court of Los Angeles, Van Nuys Judicial District, County of Los Angeles, California, [REDACTED] the applicant was convicted of the misdemeanor offense of grand theft-property over \$400, in violation of 487(a) PC (arrest date November 9, 1996). She was placed on probation for a period of 24 months, under the terms and conditions that she serves 45 days in the county jail, and pay restitution fine in the amount of \$100. On February 14, 2001, the court ordered the plea, verdict, or finding of guilt set aside and vacated, a plea of not guilty was entered, and the case was dismissed pursuant to 1203.4 PC.

5. The Federal Bureau of Investigation report shows that on March 5, 2002, in Glendale, California, the applicant was arrested for inflicting corporal injury to spouse/cohabitant. The court's final disposition of this offense is not contained in the record.

Despite the dismissal or expungement of the applicant's four misdemeanor convictions, the Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), determined that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. The applicant, therefore, remains convicted of the four misdemeanor offenses listed in Nos. 1, 2, 3, and 4 above for immigration purposes.

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). The applicant is, therefore, inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, based on her convictions of crimes involving moral turpitude.

Accordingly, the applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on her record of at least four misdemeanor convictions, and because she is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. 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 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.