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U.S. Department of Homeland Security  
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Washington, DC 20529

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**U.S. Citizenship  
and Immigration  
Services**



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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **NOV 04 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:  
[REDACTED]

**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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 based on his conviction of a felony or two or more misdemeanors. The director, therefore, denied the application.

On appeal, counsel asserts that the director's decision is not supported by the record because one of the applicant's conviction was dismissed. Counsel indicates that he needs 90 days to submit a brief and/or evidence; however, the file contains no further response. 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 July 27, 2000, in the Superior Court of California, Santa Cruz County, [REDACTED] the applicant was convicted of "wet reckless," in violation of 23103.5 VC, a misdemeanor. He was placed on probation for a period of 36 months, and ordered to pay \$821 in fines, costs, and restitution.
2. On July 12, 1999, in the Superior Court of California, Santa Cruz County, [REDACTED] the applicant was convicted of "inflict corporal injury," in violation of 273.5(a) PC, a felony. He was placed on probation for a period of 36 months.

Counsel, on appeal, states that the applicant's conviction of violating PC 273.5 (No. 2 above) has been dismissed. He asserts that the director's decision conflicts with the 9<sup>th</sup> Circuit Court of Appeals' decision in *Lujan-Almendariz v. INS*, 222 F.3d 728 (9<sup>th</sup> Cir. 2000), which directs that state court dismissals be given effect in

immigration cases. This assertion of counsel is without merit. *Lujan-Almendariz* refers to first-time offenders of simple possession of a controlled substance who were subject to or convicted under the Federal First Offender Act. The applicant, in this case, was not convicted under the Federal First Offender Act.

The applicant's conviction, as detailed in No. 2 above, shows that on August 15, 2002, the court set aside the applicant's conviction and dismissed the case pursuant to 1203.4 PC. The Board of Immigration Appeals (BIA), in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), held 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 felony in No. 2 above for immigration purposes.

Inflicting corporal injury on spouse/cohabitant (spousal/domestic abuse) is a crime involving moral turpitude. *Grageda v. INS*, 12 F.3d 919 (9th Cir. 1993) Calif. Penal Code 273.5(a) [willful infliction of an injury upon a spouse, cohabitant, or parent of the perpetrator's child is a based and depraved act and is classified as a CIMT.] See also Corporal injury of a spouse/ California Penal Code 273.5(a). [California courts found this violation to include "cruel or inhuman corporal punishment or injury." This crime is a CIMT.] *Matter of Phong Nguyen Tran*, 21 I&N Dec. 291 (BIA 1996). The infliction of bodily harm upon a person with whom one has such a familial relationship is an act of depravity which is contrary to accepted moral standards.

The applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his felony conviction. The applicant is also inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, based on his conviction of a crime 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 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.