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



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

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **NOV 04 2004**

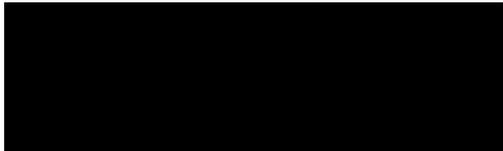
IN RE:

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 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 misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, counsel submits copies of the applicant's court records and asserts that the director's decision was not based on substantial evidence because the applicant served four days in jail for one conviction, and she served no jail time for the other conviction. He further asserts that the applicant has complied with all terms of probation and both proceedings have been fully and finally terminated. He states that, as evidenced by her declaration, the applicant is very remorseful for her transgressions.

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 8, 1997, in the Municipal Court of Los Angeles, Van Nuys Judicial District, County of Los Angeles, California, [REDACTED] the applicant was convicted of theft of property, in violation of 484(a) PC, a misdemeanor (arrest date July 5, 1997). She was placed on probation for a period of 12 months, served 4 days in the county jail, and ordered to pay \$100 in restitution fine and \$25 in attorney fees.
2. On August 27, 2002, in the Superior Court of the State of California, County of Orange, Case No. [REDACTED] the applicant was convicted of petty theft, in violation of 484/488 PC, a misdemeanor (arrest date July 24, 2002). She was placed on probation for a term of one year, to complete 30 hours of community service, and ordered to pay \$127 in fines and costs.

Counsel's assertion that the director's decision was not based on substantial evidence because the applicant did not serve more than 5 days in jail for her convictions is without merit. As defined in 8 C.F.R. § 244.1, misdemeanor means a crime committed in the United States punishable by imprisonment for a term of one year or less, **regardless of the term such alien actually served, if any**. Accordingly, the applicant had been convicted of two misdemeanor offenses within the meaning of 8 C.F.R. § 244.1. Additionally, while counsel asserts that both proceedings have been fully and finally terminated, the record shows that based on the applicant's compliance in the payment of her fine on September 8, 1997, the proceedings were terminated (No. 1 above). The termination of this proceeding, however, is not a dismissal or expungement of the conviction. Furthermore, even if the conviction was, in fact, dismissed, 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.

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 based on her two misdemeanor convictions pursuant to section 244(c)(2)(B)(i) of the Act, 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.