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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: 1/17

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

Identifying data deleted to
prevent disclosure of personal information

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

On appeal, the applicant asserts that she has changed her behavior and she is fulfilling her obligations. She states that she is a single, unmarried mother of two young children and she needs to support them. The applicant submits a letter from her probation officer and evidence of her employment.

The record contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28), signed by [REDACTED] indicating that his organization, [REDACTED] Agency, is an accredited representative recognized by the Board of Immigration Appeals. However, the U.S. Department of Justice, Executive Office for Immigration Review, Recognition and Accreditation Roster, does not list either Mr. [REDACTED] or Oneida's Agency as recognized entities. Therefore, the applicant is considered to be self-represented.

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 September 25, 2000, in Yonkers City Court, Criminal Division, State of New York, Docket No. [REDACTED] the applicant was convicted of petit larceny. She was sentenced to imprisonment at the Westchester County Jail for a term of 60 days, concurrent with Docket No. [REDACTED] (paragraphs 2 and 3 below).

2. On September 25, 2000, in Yonkers City Court, Criminal Division, State of New York, Docket No. [REDACTED] the applicant was convicted of petit larceny. She was sentenced to imprisonment at the Westchester County Jail for a term of 60 days, concurrent with Docket No. [REDACTED] (paragraph 1 above) and [REDACTED] (paragraph 3 below).

3. On September 25, 2000, in Yonkers City Court, Criminal Division, State of New York, Docket No. [REDACTED] the applicant was convicted of petit larceny. She was sentenced to imprisonment at the Westchester County Jail for a term of 60 days, concurrent with Docket No. [REDACTED] (paragraphs 1 and 2 above).

4. The Federal Bureau of Investigation report reflects that on February 9, 2001, in White Plains, New York, the applicant was arrested and charged with petit larceny. The final disposition of this arrest is not contained in the record of proceeding.

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 three misdemeanor convictions pursuant to section 244(c)(2)(B)(i) of the Act, and based on her inadmissibility 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 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.