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



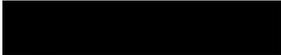
U.S. Citizenship  
and Immigration  
Services

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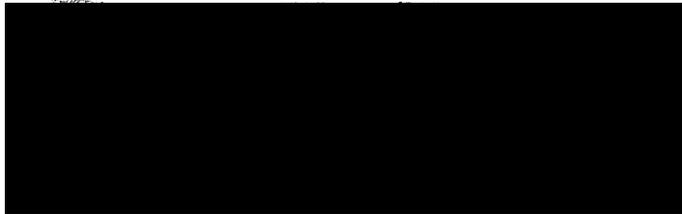
[WAC 01 174 52621]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: JUN 15 2005

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:

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.

A handwritten signature in black ink, appearing to read "R. 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 claims to be 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 denied the application because the applicant had been convicted of two misdemeanors committed in the United States.

On appeal, the applicant submits a statement and additional evidence.

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

- (a) Is a national of a 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 Temporary Protected Status 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.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more

misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

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 misdemeanor.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reveals the following offenses:

- (1) On August 8, 1991, in the Municipal Court of South Bay, County of Los Angeles, California, Case No. [REDACTED] (arrest date May 31, 1991), the applicant was convicted of burglary, 459 PC, a misdemeanor. She was placed on probation for a period of 3 years, ordered to spend one day in jail, and pay a fine in the amount of \$735.
- (2) On April 24, 1996, in the Municipal Court of South Bay Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date March 29, 1996), the applicant was indicted for Count 1, petty theft with prior jail term, 666 PC, a misdemeanor; and Count 2, theft of property, 484(a) PC, a misdemeanor. On April 30, 1996, the applicant was convicted of Count 1. She was placed on probation for a period of 3 years, ordered to spend one day in jail, and pay a fine in the amount of \$910 or perform 182 hours of community service in lieu of fine. Count 2 was dismissed.
- (3) On November 3, 2000, in the Municipal Court of South Bay Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date November 1, 2000), the applicant, under the name of [REDACTED] was convicted of petty theft with prior jail term, 666 PC, a felony. She was placed on probation for a period of 3 years, ordered to spend 4 days in jail, and perform 300 hours of "Cal Trans."

On appeal, the applicant asserts that she has provided sufficient new and material evidence establishing remorse for her past behavior, that she is now totally respectful of the law, and that a return to her native country would seriously affect her life. She submits court records indicating that on February 17, 2003 (based

on fulfillment of the conditions of her probation), the court set aside the applicant's convictions of 459 PC and 666 PC (Nos. 1 and 2 above), and dismissed the cases pursuant to 1203.4 PC.

The Board of Immigration Appeals, 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. Therefore, the applicant remains convicted, for immigration purposes, of Nos. 1 and 2 above.

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. De George*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951). The crime of burglary (with intent to commit theft) involves moral turpitude. *Matter of M-*, 2 I&N Dec. 721 (BIA 1982); *Matter of Leyva*, 16 I&N Dec. 118 (BIA 1977); *Matter of Frentescu*, 18 I&N Dec. 244, 245 (BIA 1982). Likewise, the crime of theft, whether grand or petty (Nos. 2 and 3 above), involves moral turpitude. *Matter of Scarpulla*, 15 I&N Dec. 139 (BIA 1974); *Morasch v. INS*, 363 F.2d 30 (9th Cir. 1966). Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to her convictions of burglary and theft, found to be crimes of moral turpitude.

The applicant is ineligible for TPS due to her record of one felony and two misdemeanor convictions, detailed in Nos. 1, 2, and 3 above, and because she is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act. Sections 244(c)(2)(B)(i) and 244(c)(1)(A)(iii) of the Act. Consequently, the director's decision to deny the application will be affirmed.

It is noted that on June 13, 1988, the Immigration Judge administratively closed removal proceedings based on the applicant's failure to appear at the removal proceedings.

An alien applying for temporary protected status has the burden of proving that he or 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.

**ORDER:** The appeal is dismissed.