

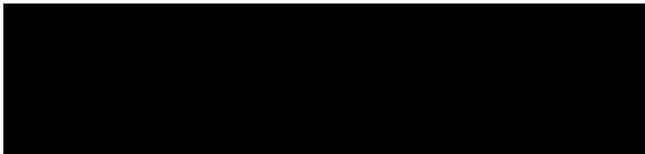
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
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U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: JUN 15 2005
[WAC 02 197 53708]

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 denied the application because the applicant had been convicted of a felony or two or more misdemeanors.

On appeal, the applicant submits a statement.

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 shows that on April 23, 1993, in the Municipal Court of Los Angeles, Van Nuys Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date April 21, 1993), the applicant was indicted for Count 1, conspire to commit a crime, 182(a)(1) PC, a felony; Count 2, attempted grand theft, 664-487 PC, a felony; and Count 3, attempted murder, 664-187(a) PC, a felony. On September 27, 1993, the applicant entered a plea of guilty as to Counts 1 and 2. He was sentenced to serve 16 months in the state prison. The disposition as to Count 3 is not reflected on the court record.

On appeal, the applicant asserts that his two convictions are at least 10 years old, and his record has been cleared.

A time limitation is not provided for criminal activities for applicants for TPS under section 244(c)(2)(b) of the Act, and as provided in 8 C.F.R. § 244.4(a). Clearly, the applicant must meet the eligibility requirements at the time the application is filed, as well as at the time the application is adjudicated. Although the applicant asserts that his records are cleared, there is no evidence in the record to support this assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, even if the applicant's felony convictions were dismissed, 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.

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 grand theft involves moral turpitude. *Matter of Chen*, 10 I&N Dec. 671 (BIA 1964); *Matter of Scarpulla*, 15 I&N Dec. 139 (BIA 1974). Because attempts involve the specific intent to do the substantive crime, if the substantive crime involves moral turpitude, so does the attempt to commit that crime. *Matter of D-*, 1 I&N Dec. 190, 194 (BIA 1942); *Matter of Awaijane*, 14 I&N Dec. 117 (BIA 1972). Accordingly, attempted grand theft is a crime of moral turpitude. Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his felony conviction found to involve moral turpitude.

The applicant is ineligible for TPS due to his two felony convictions, and because he 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.

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.