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U.S. Citizenship  
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MAR 07 2005

FILE: [REDACTED] OFFICE: TEXAS SERVICE CENTER DATE:  
[SRC 02 203 54473]

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, Texas 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 he found the applicant inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act due to his conviction of a crime involving moral turpitude, and 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 [REDACTED]

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 April 9, 1998, in the [REDACTED] the applicant was convicted of soliciting prostitution, a misdemeanor. He was ordered to pay \$140 in fines.
- (2) On July 7, 1998, in [REDACTED] (arrest date September 4, 1997), the applicant was convicted of resisting an officer without violence, a misdemeanor. He was sentenced to time served.
- (3) The records of the Broward County 17<sup>th</sup> Judicial Circuit of Florida shows that the applicant was arrested for a traffic infraction under [REDACTED] and that a disposition was entered. The date and the final disposition of this arrest are not shown in the court record.

On appeal, the applicant asserts that he was cleared of all charges, and that although he could not make his first court date, he was able to have a hearing with the judge, the case was subsequently dropped, and all he had to pay was \$140 fine.

The court record shows that the applicant entered a plea of nolo contendere to soliciting prostitution (No. 1 above), and the court entered a conviction based on the applicant's plea. On April 22, 1998, the court granted the applicant's motion to vacate the case. The record, however, does not show the reason the case was vacated or dismissed. Further, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes.

[REDACTED] Therefore, the applicant remains convicted, for immigration purposes, of No. 1 above.

Prostitution or soliciting prostitution is a crime involving moral turpitude. [REDACTED]

[REDACTED] The director determined that the applicant was inadmissible to the United States, pursuant to section [REDACTED] of the Act, based on his conviction of prostitution, found to involve moral turpitude.

[REDACTED] of the Act provides for an exception to inadmissibility of an alien convicted of only one crime of moral turpitude, where the maximum penalty possible for the crime did not exceed imprisonment for one year and the alien was not sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was ultimately executed). In this case, the applicant was convicted of one misdemeanor offense and he was not sentenced to imprisonment, but rather ordered to pay fines. The applicant qualifies for this exception to inadmissibility under [REDACTED] of the Act. Therefore, this finding of the director will be withdrawn.

The applicant, however, remains ineligible for TPS due to his record of at least two misdemeanor convictions detailed in Nos. 1 and 2 above. [REDACTED] the Act and [REDACTED] Consequently, the director's decision to deny the application for this reason will be affirmed.

The record of proceeding contains an outstanding Warrant of Removal/Deportation, Form I-205, issued on September 22, 1998, and that the applicant failed to appear at the Miami district office on April 26, 1999, for his enforced departure.

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.