

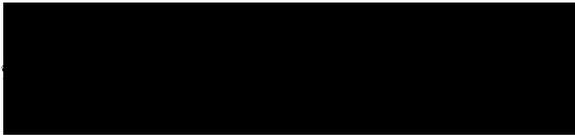
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U.S. Department of Homeland Security
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U.S. Citizenship
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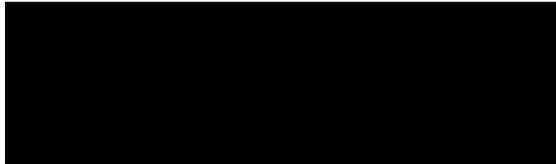
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FILE: [REDACTED]
[SRC 99 155 50382]

OFFICE: TEXAS SERVICE CENTER

DATE: MAR 28 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.

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 Honduras 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 committed in the United States.

On appeal, the applicant resubmits copies of court documents previously furnished.

The applicant appears to be represented; however, the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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 December 13, 1990, in Dade County, Florida, Case No. [REDACTED] the applicant was convicted of petit larceny, a misdemeanor. She was sentenced to time served.
- (2) The Federal Bureau of Investigation (FBI) fingerprint results report shows that on February 2, 1991, in Dade County, Florida, the applicant was arrested for Count 1, robbery; and Count 2, resisting officer-arrest without violence. The final court disposition of this arrest is not contained in the record although she was requested on December 17, 2002, to submit the final court dispositions of all arrests.
- (3) On June 20, 1996, in the Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida, Case No. [REDACTED] the applicant was indicted for grand theft, Florida Statutes 812.014(1) and (2)(c), a felony. The applicant was subsequently convicted of the offense and was placed on probation. Because she violated the terms of her probation, on October 28, 1998, the court revoked the probation and sentenced the applicant to 30 days in prison with credit for time served.
- (4) The FBI report shows that on September 28, 1998, in Dade County, Florida, the applicant was arrested for "FLIGHT-ESCAPE-FUGITIVE FROM PALM BEACH COUNTY," a felony offense. While it appears that this arrest relates to No. 3 above, the court's final disposition of the charge of "escape" is not contained in the record.

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 theft, whether grand or petty, 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 to the United States under section 212(a)(2)(A)(i)(I) of the Act due to her two convictions of theft, found to involve moral turpitude (Nos. 1 and 3 above). There is no waiver available for inadmissibility under this section of the Act.

The applicant is ineligible for TPS due to her felony conviction and because she failed to provide the final court disposition of her arrests detailed in Nos. 2 and 4 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Additionally, she is ineligible because she is inadmissible pursuant to section 212(a)(2)(A)(i)(I) 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.