



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **AUG 01 2006**
[WAC 02 152 52200]

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:



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.

for Robert P. Wiemann, Chief
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 on February 11, 2003, because the applicant had been convicted of a felony or two or more misdemeanors committed in the United States.

On appeal, the applicant asserts that his crime of shoplifting was minor and it was wrong to deny him TPS for a crime that occurred years ago that was minor. He states that he is now a "completely law-abiding person" and he should be granted TPS.

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 7, 1997, in Los Angeles, California, the applicant was arrested and charged with battery on a spouse-cohabitant/fiancée. The applicant has failed to submit the final court disposition of this arrest. Rather, the applicant submitted a letter from the Superior Court, Northwest District, Van Nuys, California, indicating that there is "no record on file for this person [REDACTED] with the arrest date of 12/7/97 for 'battery on spouse,'" however, it is noted that the name the applicant used when he was arrested was [REDACTED]. Additionally, there is no evidence that this case was heard at that court; it may be assumed that the applicant would have known where his court hearing took place. If prosecution was rejected, such record should have been filed with the appropriate court and/or state or district attorney.
- (2) On March 23, 1998, in the Municipal Court of L.A., Van Nuys Judicial District, County of Los Angeles, California, Case [REDACTED] (arrest date March 19, 1998), the applicant was indicted for Count 1, inflicting corporal injury on a spouse, 273.5(a) PC, a misdemeanor; Count 2, battery on a peace officer-duty, 242-243(c) PC, a misdemeanor; and Count 3, battery on a peace officer, 242-243(b) PC, a misdemeanor. On March 23, 1998, the applicant was convicted of Count 1. He was placed on probation for a period of 36 months under the condition that he serve 45 days in the county jail, ordered to pay \$300 in fines and restitution, to attend domestic violence counseling classes, and enroll in a 12-month batterer's counseling program and comply with the terms of that program. Because the applicant violated the terms of his probation, a bench warrant was issued for his arrest, and probation was revoked. On January 19, 1999, the court reinstated the applicant's probation, to

continue on the same terms and conditions with modifications as to Count 1: to serve an additional 30 days in the county jail. Counts 2 and 3 were dismissed.

- (3) On June 7, 1999, in the Municipal Court of L.A.-Van Nuys Judicial District, County of Los Angeles, California, Case [REDACTED] (arrest date May 13, 1999), the applicant was convicted of theft of property, 484(a) PC, a misdemeanor. He was placed on probation for a period of 24 months under the condition that he serve 10 days in the county jail, and ordered to pay \$177.75 in restitution fine and costs.
- (4) On June 7, 1999, in the Municipal Court of L.A.-Van Nuys Judicial District, County of Los Angeles, California, [REDACTED] (arrest date June 6, 1999), the applicant was convicted of theft of property, 484(a) PC, a misdemeanor. He was placed on probation for a period of 24 months under the condition that he serve 20 days in the county jail, and ordered to pay \$177.75 in restitution fine and costs.

The applicant's assertion that his crime of shoplifting was minor, is without merit. The record shows that the applicant was convicted of two offenses of "theft of property," found to be misdemeanors and crimes of moral turpitude. Theft or larceny, whether grand or petty, is a crime involving moral turpitude (Nos. 3 and 4 above). *Matter of Scarpulla*, 15 I&N Dec. 139 (BIA 1974); *Morasch v. INS*, 363 F.2d 30 (9th Cir. 1966). Likewise, inflicting corporal injury upon a spouse, cohabitant, or parent of the perpetrator's child is a base and depraved act and is classified as a crime involving moral turpitude. *Grageda v. INS*, 12 F.3d 919 (9th Cir. 1993). See also *Matter of Phong Nguyen Tran*, 21 I&N Dec. 291 (BIA 1996). The infliction of bodily harm upon a person with whom one has such a familial relationship is an act of depravity that is contrary to accepted moral standards. Therefore, the applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act due to his three misdemeanor convictions found to be crimes of moral turpitude.

Furthermore, the applicant's assertion that he should be granted TPS because his convictions "occurred years ago" is also without merit. As provided in section 244(c)(2)(b) of the Act, an alien shall not be eligible for TPS if the Secretary finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. 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).

The applicant is ineligible for TPS due to his record of at least three misdemeanor convictions, detailed in Nos. 2, 3 and 4 above, 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.

The record shows that in removal proceedings held on March 24, 2004, the Immigration Judge denied the applicant's application for asylum and application for withholding of removal, and granted the applicant voluntary departure on or before May 24, 2004, with an alternate order of removal if he should fail to depart as required. There is no evidence that the applicant departed from the United States.

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.