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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: JUL 20 2006
[EAC 03 064 51488]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again by the Director, Vermont Service Center. The application 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 on August 6, 2003, because he found the applicant had failed to submit requested court documentation relating to his criminal record.

On August 25, 2003, the applicant filed a motion to reopen the case. On motion, the applicant stated that he did respond to the Notice of Intent to Deny dated June 16, 2003.

The director reopened the matter on January 3, 2005, and denied the application because he found the applicant had been convicted of a felony.

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 reveals that the applicant was convicted on October 4, 2001, in the Supreme Court of the State of New York, Queens County, of attempted robbery in the third degree in violation of section 160.05 NYS PL, a felony. (Case No. [REDACTED])

On appeal, the applicant states that he believes he qualifies for TPS; however, he does not submit any additional evidence to overcome the ground for denial of the application.

The applicant is ineligible for TPS due to his record of one felony conviction, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

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 attempted robbery involves moral turpitude. *Matter of Romandia-Herreros*, 11 I&N Dec. 772 (BIA 1966) (Citing Mexican Federal Penal Code Re Robbery – “Robo”). See also *Matter of Martin*, 18 I&N Dec. 226 (BIA 1982) (Colorado law). *Matter of Carballe*, 19 I&N Dec. 357 (BIA 1986) (Florida Statute). *Ashby v. INS*, 961 F.2d 555 (5th Cir. 1992). *Matter of Burbano*, I.D. 3229 (BIA 1994). *Chen v. INS*, 1966 WL 328448 (1st Cir. 6/20/96). Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his felony conviction detailed above.

While the issue of the applicant's inadmissibility was not raised by the director, the applicant is also ineligible for TPS due to his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. Therefore, the application must also be denied for this reason. There is no waiver available for inadmissibility under this section of the Act.

Finally, it is noted that the initial registration period for Salvadorans was from March 9, 2001 through September 9, 2002. The applicant's Form I-821, Application for Temporary Protected Status, was not properly submitted with correct fee until October 8, 2002, one month after the expiration of the initial registration period for Salvadorans. The applicant has not provided any evidence to establish his eligibility for late initial registration. Therefore, the application also must be denied for this reason.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.