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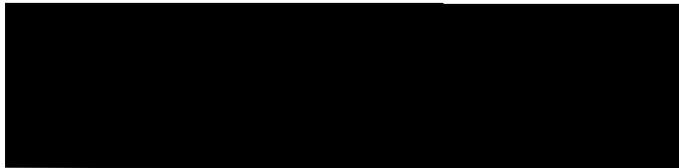
U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship
and Immigration
Services

M 1



FILE: [REDACTED]
[EAC 01 161 54323]

OFFICE: VERMONT SERVICE CENTER

DATE: JUN - 1 2006

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.

Cindy M. Gomez for
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office (AAO) 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 because she found the applicant ineligible for TPS due to a felony conviction, and inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his conviction in the matter of a crime involving moral turpitude.

On appeal, the applicant submits 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 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 October 1, 2004, the applicant was arrested by the Plainfield [New Jersey] Police Department and was charged with “001 CNT 2C:14-2C(4), Sexual Assault;”
- (2) On February 16, 2005, the applicant plead guilty and was convicted of “001 CNT 2C:24-4A, Endanger Welfare of Children,” a third degree felony, Indictment No. [REDACTED]

On appeal, the applicant submits a letter from the mother of his child, who is described as his common-law wife, asking for flexibility in handling the case. She states that she does not want her child to lose contact with his father along with the loss of financial support provided by the applicant to their family. The appeal also includes an undated, unsigned statement, from an unidentified source, indicating: “I do not have any excuse for what I have done,” and asking for permission to remain in the United States due to vandalism and general conditions existing in El Salvador. In support of the appeal, the applicant submits: the results of an examination dated June 24, 2005, by the Adult Diagnostic and Treatment Center, Avenal, New Jersey, with corresponding letter dated June 29, 2005, from the State of New Jersey, Department of Corrections, Administrator, indicating that the applicant’s case, Indictment No. [REDACTED] does not fall under the

purview of the Sex Offender Statutes, N.J.S. 2C:47-1 et. al.; the order for psychiatric evaluation; Adult Presentence Report, Superior Court of New Jersey, with additional documents relating to the offense; and, a State of New Jersey Birth Certificate indicating the applicant as the father of a child born on January 17, 2003.

The applicant is ineligible for TPS due to his record of at least one felony conviction, detailed above. 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 "2C:24-4A, Endanger Welfare of Children," a third degree felony, (No. 1 above) involves moral turpitude. Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his felony conviction detailed above.

Beyond the decision of the director, the applicant also has failed to submit sufficient evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The applicant submitted evidence dated in 1999 and 2000, but not for the requisite periods. Therefore, the applicant has not met the requirements under 8 C.F.R. § 244.2(b) and (c) and the application must also be denied for these reasons.

In addition, it is noted that the record contains only a photocopy of a birth certificate, with English translation. The applicant failed to submit photo identification or a national identity document from his country of origin bearing a photograph and/or fingerprint. The birth certificate alone is insufficient to establish the applicant's identity and nationality under the provisions of 8 C.F.R. § 244.9(a)(1). Therefore, the application must also 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.