



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: MAY 15 2006

[EAC 01 190 51614]

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:

[REDACTED]

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, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont 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 the applicant had been convicted of a felony committed in the United States.

On appeal, counsel asserts that the felony charge was amended to a misdemeanor, and that the applicant pled guilty to the misdemeanor offense.

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 shows that on January 2, 1996, in the Municipal Court of the Central Valley Judicial District, County of Fresno, California, Case [REDACTED] the applicant was indicted for Count 1, terrorist threats, Penal Code (PC) 422, a felony; and Count 2, burglary in the first degree, PC 459/460, a felony. The felony charge was subsequently amended and reduced to a misdemeanor pursuant PC 17(b)(4). On January 26, 1996, the applicant entered a plea of guilty to the reduced charge of PC 459, a misdemeanor. He was sentenced to 365 days of imprisonment, suspended except 90 days, placed on conditional sentence for a period of 3 years, and ordered to pay \$1635 in fines and costs. Count 1 was dismissed.

Pursuant to California Penal Code 460(b), all other kinds of burglary [not listed in subparagraph (a), burglary of the first degree] are of the second degree. Penalty for burglary, as provided in PC 461, is punishable as follows:

1. Burglary in the first degree: by imprisonment in the state prison for two, four, or six years.
2. Burglary in the second degree: by imprisonment in the county jail not exceeding one year or in the state prison.

The record, in this case, shows that the felony charge was amended and reduced to a misdemeanor pursuant to PC 17(b)(4). This section states, in part:

(b) When a crime is punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:

(4) When the prosecuting attorney files in a court having jurisdiction over misdemeanor offenses a complaint specifying that the offense is a misdemeanor, unless the defendant at the time of his or her arraignment or plea objects to the offense being made a misdemeanor, in which event the complaint shall be amended to charge the felony and the case shall proceed on the felony complaint.

As claimed by counsel on appeal, the record indicates that the applicant entered a plea of guilty and he was convicted of a misdemeanor offense pursuant to PC 17(b)(4).

Section 101(a)(48)(B) of the Act, 8 U.S.C. § 1101(a)(48)(B), states:

Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law **regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.** (Emphasis added.)

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 burglary (with intent to commit theft) is a crime involving moral turpitude. See *Matter of R-*, 1 I&N Dec. 540 (BIA 1943); *Matter of M-*, 2 I&N Dec. 721 (BIA 1982); *Matter of Leyva*, 16 I&N Dec. 118 (BIA 1977); *Matter of Frentescu*, 18 I&N Dec. 244, 245 (BIA 1982). The indictment report shows that the applicant did willfully and unlawfully enter an occupied building with the intent to commit larceny. Accordingly, burglary, in this case, is a crime of moral turpitude.

Section 212(a)(2)(A)(ii) 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).

The record, in this case, shows that the applicant was subsequently convicted of a misdemeanor; however, the record further shows that the applicant was sentenced to imprisonment for a period of 3 years, imposition suspended, and placed on probation for a period of 3 years; and 365 days of imprisonment were all suspended, except 90 days. Therefore, the applicant does not qualify under this exception. Sections 212(a)(2)(A)(ii) and 101(a)(48)(B) of the Act.

The applicant is ineligible for TPS because he is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, based on his conviction of a crime involving moral turpitude. Section 244(c)(1)(A)(iii) of the Act. There is no waiver available to an alien found inadmissible under this section. See 8 C.F.R. § 244.3(c)(1). Consequently, the director's decision to deny the application will be affirmed.

The record of proceeding indicates that in removal proceedings held in Newark, New Jersey on July 16, 1997, the Immigration Judge granted the applicant voluntary departure until January 16, 1998, with an alternate order of deportation to El Salvador. The applicant failed to depart as required. A Warrant of Removal/Deportation, Form I-205, was issued on August 25, 1998, and the applicant was removed from the United States to El Salvador on September 10, 1998.

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.