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U.S. Citizenship
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FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: OCT 31 2006

[EAC 01 250 53737]

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.

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 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 she found the applicant had been convicted of a felony.

On appeal, counsel for the applicant submits a statement and 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 22, 1992, the applicant pled guilty in the Circuit Court for Montgomery County, State of Maryland, to the following charges: arson of dwelling in violation of section 21-902 of the Maryland Code, a felony; and three counts of reckless endangerment in violation of section 6-102 of the Maryland Code, all misdemeanors. On December 1, 1992, the court suspended entry of judgment with regard to the applicant's three charges of reckless endangerment. (Date of Arrest: July 25, 1992; Case Number [REDACTED])
2. On January 8, 1993, the applicant pled guilty in the Circuit Court for Montgomery County, State of Maryland, to driving under the influence of alcohol in violation of section 21-902(b) of the Maryland, a misdemeanor. (Date of Arrest: December 11, 1992; Case Number [REDACTED])
3. On December 1, 1995, the applicant pled guilty in the Circuit Court for Montgomery County, State of Maryland, to driving while impaired by alcohol in violation section 21-902(b) of the Maryland Code, a misdemeanor. (Date of Arrest: Case Number [REDACTED])

On appeal, counsel states, “[a]lthough the [applicant] was convicted of two (2) misdemeanors, they are not both crimes of moral turpitude, plus [applicant] is entitled to waiver.” Counsel submits copies of final court disposition documents relating to the charges detailed above.

Contrary to counsel’s assertion appeal, the record reveals that the applicant has been convicted of one felony, detailed in No. 1 above, and two misdemeanors, detailed in Nos. 2 and 3 above. The applicant is ineligible for TPS due to his record of one felony conviction and two misdemeanor convictions. There is no waiver available of the basic eligibility grounds detailed in 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.

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 as an alien who has been convicted of a felony crime involving moral turpitude. Arson is a crime involving moral turpitude. *Johnson v. United States ex rel. Pepe*, 28 F.2d 810 (2nd Cir. 1928). Therefore, the application must also be denied for this reason. There is no waiver available for inadmissibility under this section of the Act.

It is noted that the applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his wife, [REDACTED], a naturalized United States citizen. The applicant subsequently applied for waiver of grounds of inadmissibility under section 212(a)(2)(A)(i)(1) and pursuant to section 212(h) of the Act, as amended, at the United States Consulate General in Tijuana, Mexico. The application was denied on July 6, 1994, based on a finding that the applicant had failed to establish that his United States citizen wife would undergo extreme hardship through his continued inadmissibility from the United States. The applicant’s appeal from the denial of his waiver application was dismissed by the AAO on June 13, 1995, based on a finding that the applicant not established that he merited a favorable exercise of discretion.

It is further noted that the applicant was previously removed from the United States to El Salvador on December 3, 1991.

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.