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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: **AUG 20 2007**
[WAC 01 172 53225]
[EAC 06 321 76383]

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 Vermont Service Center. Any further inquiry must be made to that office.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office on appeal.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 was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on January 28, 2004. The director subsequently withdrew the applicant's TPS status on February 5, 2007, when it was determined that the applicant had failed to respond to a notice of intent to withdraw (ITW) requesting that he submit the final court dispositions of all of his arrests, including his arrest listed on the Federal Bureau of Investigation (FBI) fingerprint results report. Within the same decision, the director denied the applicant's re-registration application, filed on August 17, 2006, under Citizenship and Immigration Services (CIS) receipt number EAC 06 321 76383, because the underlying TPS was withdrawn based on the applicant's failure to timely and/or adequately respond to the ITW.

The director may withdraw the status of an alien granted TPS at any time if it is found that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

On appeal, the applicant submits the final court disposition of his criminal arrest and requests that he be given another chance to receive and apply for TPS.

An alien shall not be eligible for temporary protected status 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. 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 indicates that December 19, 2005, the applicant was arrested and charged with Count 1, attempted theft of a vehicle, PC 664/10851(a), a felony; and Count 2, burglary, PC 459/460(b), a felony. On April 19, 2006, in the Hall of Justice, San Jose, California, the court amended Counts 1 and 2 to misdemeanors. The applicant entered a plea of *nolo contendere* to the amended Counts 1 and 2, and the applicant was found guilty as to Counts 1 and 2. He was placed on probation for a period of 2 years, and ordered to pay \$363 in fines and costs as to Count 1; he was sentenced to 10 days in the county jail as to Count 2. On January 6, 2007, the court found that the applicant was in violation of his probation, and he was committed to a term of 5 days in jail.

Burglary (with intent to commit theft) is a crime involving moral turpitude. *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). Additionally, theft or larceny, whether grand or petty, is a crime involving moral turpitude. *Matter of Scarpulla*, 15 I&N Dec. 139 (BIA 1974); *Morasch v. INS*, 363 F.2d 30 (9th Cir. 1966); [Auto theft, *Lukowski v. INS* 279 F.3d 644(8th Cir.2002)]. Because attempts involve the specific intent to do the substantive crime, if the substantive crime involves moral turpitude, so does the attempt to commit that crime. *Matter of D-*, 1 I&N Dec. 190, 194 (BIA 1942); *Matter of Awaijane*, 14 I&N Dec. 117 (BIA 1972). Accordingly, attempted theft of a vehicle is a crime involving moral turpitude. Therefore, the applicant is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, based on his two misdemeanor convictions found to be crimes of moral turpitude.

The applicant is ineligible for TPS due to his two misdemeanor convictions, and because he is inadmissible 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 withdraw the applicant's TPS and to deny the re-registration application will be affirmed.

It is noted on the FBI report that the applicant had indicated that he was born in Mexico, and that he is a citizen of Mexico. The applicant is required to meet the eligibility requirements that he is a national of a designated foreign state pursuant to section 244(c) of the Act. The country of Mexico is not a foreign state designated under section 244 of the Act.

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.