

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



M/

FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: **AUG 20 2007**

[EAC 07 037 70257]

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.

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

for Robert P. Wiemann, Chief  
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 failed to establish that she was eligible for late registration.

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 alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS 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.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of condition described in paragraph (f)(2) of this section.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her initial application on November 6, 2006.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

In a Notice of Intent to Deny (NOID) dated March 8, 2007, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit the final court disposition of every charge against her, including her arrest listed on the Federal Bureau of Investigation fingerprint results report. The director noted that the evidence furnished in response to the NOID was sufficient to establish that she is a citizen of El Salvador and that she had continuously resided and had been continuously physically present in the United States during the requisite period; however, the applicant had failed to establish that she was eligible for late registration. The director maintained that although the applicant indicated that she was eligible for late registration [based on her marriage to a TPS-eligible alien], the applicant was unable to qualify under her spouse's TPS because she was married on January 4, 2004, after the initial registration period, and that in order to be eligible for late registration under 8 C.F.R. § 244.2(f)(2)(iv), the qualifying relationship must have existed during the initial registration period. The director, therefore, denied the application on April 10, 2007.

On appeal, the applicant neither addressed nor submitted any evidence to establish her eligibility for late registration.

Accordingly, the applicant has failed to establish that she has met the requirements for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the TPS application on this ground will be affirmed.

It is noted at this point that the applicant filed a TPS application during the initial registration period on March 28, 2001, under receipt number WAC 01 167 50852. The Director, California Service Center, denied that application on January 12, 2004, because the applicant had failed to submit adequate and sufficient response to his request for additional information, dated March 25, 2003, to establish continuous residence, continuous physical presence, nationality, identity, and court dispositions of all of her arrests. The record shows that the applicant responded to the director's request on April 24, 2003. Although she furnished evidence of her nationality, identity, and evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period, the applicant submitted incomplete court documents relating to her felony conviction.

It is further noted that the director, in his decision dated April 10, 2007, failed to address the court disposition of the applicant's criminal charges furnished by the applicant in response to the NOID.

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 on August 9, 2002, in the Superior Court of California, County of Los Angeles, (arrest date July 24, 2002), the applicant was indicted for Count 1, inflict injury on child, 273d(a) PC, a felony; and Count 2, great bodily injury/death to child, 273a(a) PC, a felony. On August 9, 2002, the applicant was convicted of Count 1. Imposition of sentence was suspended and the applicant was placed on probation for a period of 36 months under the condition that she serve 8 days in

jail, ordered to pay a restitution fine in the amount of \$200, and to attend parenting classes (52) for a year. Count 2 was dismissed. On September 13, 2005, more than 3 years after the applicant's felony conviction of 273d(a) PC, and after completion of her court probation, the court amended the felony to a misdemeanor, the plea, verdict, or finding of guilt was set aside, a plea of not guilty was entered, and the case was dismissed pursuant to 1203.4 PC.

The Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), held that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. Furthermore, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. Therefore, the applicant remains convicted, for immigration purposes, of the felony offense.

Additionally, it was held in *Guerrero de Nodahl v. INS*, 407 F.2d 1405 (9th Cir. 1969), that a conviction under the California Penal Code 273(d) for the infliction of any cruel or inhuman corporal punishment upon a child 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 her conviction of a crime involving moral turpitude.

On appeal, the applicant asserts that she has always maintained her innocence before the court, and "because the judge who presided over my case saw that the accusation against me was in great manner unfounded, and because I was misrepresented by my attorney, this conviction was going to be reversed from minor felony to a misdemeanor upon completion of a probation period, which I complied with."

The record in this case indicates that the applicant was indicted for the felony offense, and the court found the applicant guilty of the felony offense. Citizenship and Immigration Services (CIS) is required to rely on the court record as it stands, and cannot make determinations of guilt or innocence based on that record. Furthermore, CIS may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

Accordingly, the applicant is ineligible for TPS due to her felony conviction, and because she is inadmissible to the United States 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 TPS application will 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.