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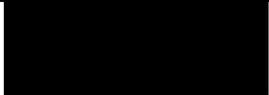
U.S. Citizenship
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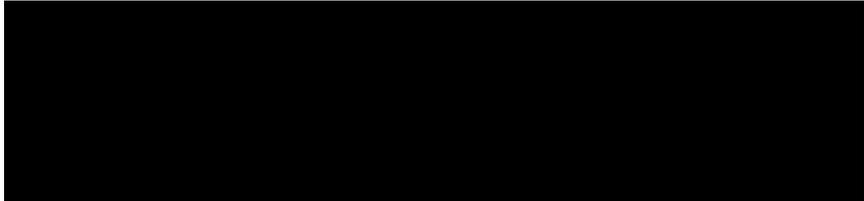
OFFICE: CALIFORNIA SERVICE CENTER

DATE: JAN 17 2007

[WAC 05 038 51893]

IN RE:

Applicant:



APPLICATION:

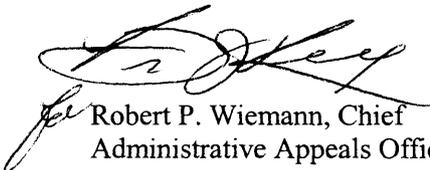
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, California 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 or two or misdemeanors committed in the United States.

On appeal, the applicant states that he has “a relief of I-130.” He submits additional court documents relating to his convictions.

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following offenses:

- (1) On December 6, 1984, in the Municipal Court of Los Angeles Judicial District, County of Los Angeles, California, Case No. [REDACTED] the applicant (name used: [REDACTED]) was convicted of Taking a Vehicle Without Owner's Consent/Vehicle Theft, 10853 VC, a misdemeanor. He was placed on probation for a period of 36 months, and ordered to spend the first 30 days in the county jail.
- (2) On June 21, 1989, in the Municipal Court of Criminal Justice CTR (LAC) Judicial, County of Los Angeles, California, Case No. [REDACTED] (arrest date June 19, 1989), the applicant (name used: [REDACTED]) was indicted for Possession of Narcotic Controlled Substance, 11350(a) Health & Safety Code (H&S), a felony. On August 8, 1989, the applicant was granted drug diversion [in accordance with 1000 PC]. Because the applicant violated the terms of the diversion, on May 7, 1990, the court terminated the grant of diversion and criminal proceedings were reinstated. On June 27, 1990, the applicant was convicted of the felony offense of possession of cocaine, 11350(a) H&S. He was placed on probation for a period of 3 years, and ordered to spend the first 5 days in jail. On May 11, 1992, the Superior Court of California, County of Los Angeles, denied counsel's *Writ of Error Coram Nobis* to vacate judgment. On July 9, 1992, the applicant's counsel filed a notice of appeal from the judgment of the Superior Court. In a hearing held on February 24, 1994, the Court of Appeal of the State of California, Second Appellate District, Division One, found that the "defendant's [applicant's] claim

that his attorney provided ineffective representation for failing to adequately advise him of the immigration consequences lacks merit," and affirmed the "judgment (order denying defendant's petition for a writ of error coram nobis)." On May 14, 1999, approximately 9 years after the applicant's felony conviction, the Superior Court amended the felony to a misdemeanor, the plea of guilty was set aside, a plea of not guilty was entered, and the case was dismissed pursuant to 1203.4 PC.

- (3) The Federal Bureau of Investigation fingerprint results report indicates that on November 3, 1994, in Los Angeles, California, the applicant was arrested and charged with Inflicting Corporal Injury to a Spouse/Cohabitant, 273.5(a) PC, a misdemeanor. The final court disposition of this arrest is not contained in the record.
- (4) On September 13, 2001, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date August 25, 2001), the applicant (name used: [REDACTED]) was indicted for Theft of Property, 484(a) PC, a misdemeanor. On October 5, 2001, the court ordered the complaint amended as an infraction, and the court found the applicant guilty of the reduced charge of "484(a)/21," an infraction, pursuant to § 490.1 PC. He was ordered to pay \$315 in fines and costs.
- (5) On May 16, 2003, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date April 6, 2003), the applicant (name used: [REDACTED]) was indicted for Count 1, Assault with a Deadly Weapon/Instrument, 245(a)(1) PC, a felony; and Count 2, Assault with a Deadly Weapon/Instrument, 245(a)(1) PC, a felony. On May 16, 2003, the applicant was convicted of Count 1. He was placed on probation for a period of 3 years under the condition that he serve 34 days in the county jail, and ordered to pay restitution fine in the amount of \$200. Count 2 was dismissed. On November 29, 2004, the court amended the felony to a misdemeanor, the plea of guilty or conviction was set aside, a plea of not guilty was entered, and the case was dismissed pursuant to 1203.4 PC.
- (6) On April 10, 2001, in the Municipal Court of L.A. Criminal Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date April 8, 2001), the applicant (name used: [REDACTED]) was indicted for Count 1, Willfully Cause Injury to an Elder or Dependent Adult, 368(c) PC, a misdemeanor; Count 2, Inflict Pain or Suffering to an Elder or Dependent Adult, 268(b) PC, a misdemeanor; and Count 3, Making a Terrorist Threat, 422 PC, a misdemeanor. On April 25, 2001, the applicant was convicted of Count 2. He was placed on probation for a period of 36 months under the condition that he serve 75 days in the county jail, and ordered to pay \$188 in fines and costs. Counts 1 and 3 were dismissed.

The felony convictions, detailed in Nos. 2 and 5 above, were subsequently amended to misdemeanors, the plea of guilty or convictions were set aside, and the cases were dismissed pursuant to 1203.4 PC. However, the Board of Immigration Appeals (BIA), 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. Therefore, the applicant remains convicted, for immigration purposes, of the felony offenses detailed in Nos. 2 and 5 above.

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 theft or larceny, whether grand or petty, is a crime involving moral turpitude (No. 1 above). *Matter of Scarpulla*, 15 I&N Dec. 139 (BIA 1974); *Morasch v. INS*, 363 F.2d 30 (9th Cir. 1966). Likewise, assault with a deadly weapon is a crime involving moral turpitude (No. 5 above). *Matter of Goodalle*, 12 I&N Dec. 106 (BIA 1967); *Matter of Baker*, 15 I&N Dec. 50

(BIA 1974); *Matter of Psai*, 12 I&N 790 (BIA 1968). Therefore, the applicant is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, due to his convictions of theft and assault with a deadly weapon, found to be crimes of moral turpitude.

Additionally, the applicant is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) of the Act, due to his drug-related conviction (No. 2 above).

The applicant is ineligible for TPS due to his two felony and two misdemeanor convictions, and because he is inadmissible to the United States under sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(i)(II) of the Act. Sections 244(c)(2)(B)(i) and 244(c)(1)(A)(iii) of the Act. Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, it is noted that the applicant filed his TPS application on November 24, 2004, after the initial registration period for El Salvadorans (from March 9, 2001 to September 9, 2002) had closed. The applicant, on appeal, asserts that he is eligible for relief based on an approved Form I-130, Petition for Alien Relative [filed on his behalf by his United States citizen father]. The record does not contain evidence that the applicant filed an application for adjustment of status to permanent residence (Form I-485) based on the approved Form I-130, and that the adjustment application was pending during the initial registration period. The Form I-130, alone, does not convey eligibility for TPS.

Additionally, on October 8, 2002, in Los Angeles, California, the Immigration Judge denied the applicant's application for cancellation of removal, denied the application for voluntary departure, and ordered the applicant removed to El Salvador. On March 15, 2004, the BIA affirmed the decision of the IJ and dismissed the applicant's appeal. As provided in 8 C.F.R. § 244.2(g), the applicant had a 60-day period immediately following the denial of Form I-881 to file an application for late registration in order to meet the requirements described in 8 C.F.R. § 244.2(f)(2)(ii). However, the TPS application was not filed until November 24, 2004. Accordingly, the applicant has failed to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, the 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.