



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE:

[WAC 05 104 70433]
[WAC 99 194 50611]

JAN 24 2007

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.

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 Honduras who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on April 20, 2000, under Citizenship and Immigration Services (CIS) receipt number WAC 99 194 50611.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 7, 2005, and indicated that she was re-registering for TPS. The director denied the re-registration application because the applicant had failed to submit the final court dispositions of her arrests on August 30, 2000 and February 15, 2002.

In this case, however, the director should have withdrawn the applicant's TPS status rather than deny the re-registration application. Pursuant to section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1), 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. Accordingly, the decision of the director to deny the application for re-registration will be withdrawn, the case will be treated as a withdrawal, and a decision will be made based on withdrawal of the applicant's temporary protected status.

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. 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.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, the applicant was requested on March 2, 2005, to submit the final court dispositions of all of her arrests, including arrests listed in the FBI report. It is noted that the applicant, in response, did submit the final court dispositions of her arrests; additionally, the Burbank, California Police Department submitted to the Service Center the police reports of the applicant's arrests. The applicant, on appeal, resubmits copies of the final court dispositions of the following offenses:

- (1) On September 14, 2000, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date August 30, 2000), the applicant was convicted of "theft of property," 484(a) PC, a misdemeanor. She was placed on probation for a period of 3 years, and ordered to pay \$980 in fines and costs.
- (2) On March 13, 2002, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date February 15, 2002), the applicant was convicted of "grand theft: property over \$400," 487(a) PC, a felony. She was placed on probation for a period of 3 years, ordered to serve 90 days in jail, and pay restitution fine in the amount of \$200.

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). Therefore, the applicant is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, due to her convictions of theft found to be a crime of moral turpitude.

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 applicant's temporary protected status will be withdrawn.

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.