



U.S. Citizenship  
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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE:

JUL 30 2007

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IN RE:

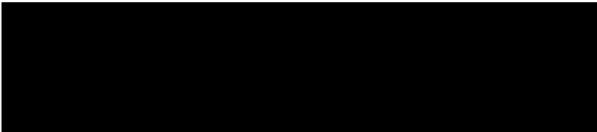
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



*PHOTOCOPY*

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, 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 submit requested court documentation relating to his criminal record.

On appeal, counsel 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

misdeemeanors 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 indicates that on July 26, 1990, in the Circuit Court for the City of Alexandria, Commonwealth of Virginia, Case No. [REDACTED] (arrest date May 9, 1990), the applicant was convicted of marital sexual assault, a felony. He was sentenced to imprisonment for a term of 60 days, execution of sentence suspended, and he was placed on probation for a period of 2 years.

On appeal, counsel asserts that the applicant's conviction of marital sexual assault was not an aggravated felony at the time he was convicted in 1990. She states that following the conviction, the Service issued an Order to Show Cause, and the Immigration Judge subsequently terminated proceedings. She further states that the applicant made several vacation visits to El Salvador without incident until April 1999, when he was detained at Dulles International Airport and was served with Notice of Removal proceedings based on the 1990 conviction. Counsel asserts that despite the applicant's "innovation of his Constitutional rights protecting against being tried twice for the same crime, the same Immigration Judge applied the 1996 *ex post facto* AEDPA and found him removable."

These assertions of counsel are without merit. A review of the record of proceeding shows that the Immigration Judge (IJ) addressed the applicant's constitutional issues during removal proceedings on February 16, 2001 (File A90 599 571). Furthermore, the Administrative Appeals Office (AAO) is not the appropriate forum to determine constitutional issues involving the applicant's convictions. Rather, those issues are within the jurisdiction of the judicial court. The AAO 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).

The record (File A90 599 571) further shows that on April 12, 1999, the applicant was placed in removal proceedings for violating immigration law and for having been convicted of a crime involving moral turpitude based on his felony conviction of marital sexual assault. On February 16, 2001, the IJ ordered the applicant removed from the United States. On March 12, 2001, the applicant appealed the decision of the IJ to the Board of Immigration Appeals (BIA). On December 23, 2002, the BIA dismissed the appeal.

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 sexual assault involves moral turpitude. *Matter of Z-*, 7 I&N Dec. 253 (BIA 1956). Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his felony conviction of a crime involving moral turpitude.

The applicant is ineligible for TPS due to his felony conviction, and because he 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 director's decision to deny the application will be affirmed.

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.