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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[redacted]

FILE: [redacted] OFFICE: CALIFORNIA SERVICE CENTER DATE: NOV 19 2007
[redacted] consolidated herein]
[LIN 01 175 51085]
[WAC 05 210 71145]

IN RE: Applicant: [redacted]

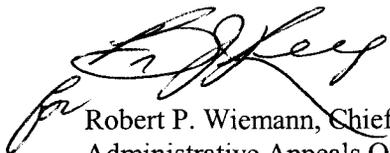
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[redacted]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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 July 24, 2001.

The director subsequently withdrew the applicant's TPS status on February 22, 2006, 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. Within the same decision, the director denied the applicant's re-registration application, filed on April 28, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 210 71145, because the applicant had abandoned his re-registration application based on his failure to respond to the ITW.

It is noted that prior to the director's notice of withdrawal of the applicant's TPS, the District Director, Minneapolis, Minnesota, on August 8, 2005, denied the applicant's TPS re-registration application filed on July 9, 2002, under receipt number LIN-02-282-50415, after determining that the applicant had abandoned his application based on his failure to respond to a request dated May 22, 2005, to submit: (1) certified copies of arrest records, including final court dispositions of all of his arrests; and (2) applications for annual re-registration for TPS for 2003, 2004, and 2005. There is no appeal from a denial due to abandonment; however, the applicant could have filed a motion to reopen within 30 days of the date of the denial notice. 8 C.F.R. § 103.2(b)(15). The record does not reflect that the applicant filed a motion within the allotted timeframe.

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, counsel submits a statement and court dispositions relating to his arrests.

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.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, the applicant was requested, in a notice of intent to deny dated September 6, 2005, to submit the final court dispositions of all of his arrests, including the arrests listed on the FBI report. The applicant failed to respond; therefore, the director withdrew the applicant's TPS status on February 22, 2006.

On appeal, counsel asserts that the applicant is eligible for TPS because all of his convictions are for offenses that, under the laws of Minnesota, are punishable "by imprisonment for a term of five days or less" and "shall not be considered a felony or misdemeanor." He submits the following court documents:

- (1) On October 30, 2001, in the State of Minnesota District Court, Case No. [REDACTED] (arrest date September 13, 2001), the applicant (name used: [REDACTED]) was convicted of engaging in prostitution, Minnesota Statute (MS) 609.324, a misdemeanor. He was placed on probation for a period of one year, and ordered to pay \$330 in fines and costs.
- (2) The FBI report indicates that on April 6, 2002, in Inver Grove Heights, Minnesota, the applicant (name used: [REDACTED]) was arrested for Count 1, "TRAF-ACC-M-3RD DEG DWI-UI ALCOHOL-MV;" Count 2, "TRAF-ACC-M-3RD DEG DWI-10 OR MORE WIN 2;" and Count 3, "TRAFFIC-MS-OTHER-MV." The final court disposition of this arrest is not contained in the record although the applicant was requested on September 6, 2006, to submit court dispositions of all of his arrests.
- (3) On May 29, 2002, in the State of Minnesota District Court, Case No. [REDACTED] the applicant (name used: [REDACTED]) was arrested for Count 1, driving after revocation of license, MS 171.24, a misdemeanor; Count 2, no seat belt use, MS 169.686, a petty misdemeanor; and Count 3, speeding, MS 169.14, a petty misdemeanor. On September 26, 2002, the applicant was convicted of Count 3, and he was ordered to pay \$140 in fines and costs. Counts 1 and 2 were dismissed.
- (4) On October 31, 2002, in the Anoka County Courthouse, State of Minnesota, Case No. [REDACTED] (arrest date September 30, 2002), the applicant (name used: [REDACTED]), was convicted of theft, MS 609.52, a misdemeanor. He was placed on probation for a period of one year, and ordered to pay \$145 in fines and costs.
- (5) On December 16, 2002, in the State of Minnesota District Court, Case No. [REDACTED] (arrest date November 29, 2002), the applicant (name used: [REDACTED]) was convicted of urinating in public, MS 280.08. He was ordered to pay \$70 in fines and costs. It is noted that MS 280.08 relates to "property taxes" rather than to the offense committed by the applicant. However, the court declared the offense of "urinating in public" a misdemeanor (the court document, in this case, indicates that the offense is a "NonTrafficMisdemeanor").

- (6) On October 24, 2003, in the State of Minnesota, Case No. [REDACTED], the applicant was arrested for "no proof of insurance," MS 169.791, a misdemeanor. Although the court record shows that the applicant was assessed \$150, no plea was entered by the applicant on the case, nor did the court find the applicant guilty of the offense. The court subsequently dismissed the case on April 27, 2005.
- (7) On September 2, 2004, in the State of Minnesota District Court, Case No. [REDACTED], the applicant was arrested for Count 1, no proof of insurance, MS 169.791, a misdemeanor; and Count 2, speeding, 169.14, a petty misdemeanor. On September 13, 2004, the applicant was convicted of Count 2, and he was ordered to pay \$111 in fines and costs. Count 1 was dismissed.

Counsel's assertions on appeal are without merit. While the offense of speeding (Nos. 3 and 7 above) is classified a petty misdemeanor¹ in Minnesota, the offense of engaging in prostitution (No. 1 above), the offense of theft (No. 4 above), and the offense of urinating in public (No. 5 above) are classified as misdemeanors.² The fact that the applicant was not sentenced to imprisonment for Nos. 1, 4, and 5 above, but, rather, was placed on probation and/or fined is not evidence that the convictions are not misdemeanors. 8 C.F.R. § 244.1 defines "misdemeanor" to mean a crime committed in the United States punishable by imprisonment for a term of one year or less, **regardless of the term such alien actually served, if any**, and that 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. The offenses are punishable by imprisonment for up to 90 days. Therefore, for immigration purposes, the applicant has been convicted of three misdemeanor offenses detailed in Nos. 1, 4, and 5 above.

Practicing or engaging in prostitution is a crime involving moral turpitude (No. 1 above). *Matter of W-*, 4 I&N Dec. 401 (Central Office 1951). Likewise, theft or larceny, whether grand or petty, is a crime involving moral turpitude (No. 4 above). *Matter of Scarpulla*, 15 I&N Dec. 139 (BIA 1974); *Morasch v. INS*, 363 F.2d 30 (9th Cir. 1966). The applicant is, therefore, inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, due to his two misdemeanor convictions found to be crimes of moral turpitude.

Accordingly, the applicant is ineligible for TPS due to his three misdemeanor convictions, because he failed to provide the final court disposition of his arrest (No. 2 above), 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 withdraw the applicant's TPS and to deny the re-registration application will be affirmed.

The record indicates that in removal proceedings held on January 10, 2001, in Harlingen, Texas, the applicant failed to appear; therefore, the Immigration Judge determined that the applicant's failure to appear and proceed with any applications for relief from removal constitutes an abandonment of any pending applications and any applications the applicant may have been eligible to file. The IJ ordered the applicant removed to El Salvador *in absentia*. A Form I-205, Warrant of Removal/Deportation, was issued on March 16, 2002.

¹ Pursuant to § 609.02 of the Minnesota Statutes, "petty misdemeanor" means a petty offense which is prohibited by statute, which does not constitute a crime and for which a sentence of a fine of not more than \$300 may be imposed.

² Pursuant to § 609.02 of the Minnesota Statutes, "misdemeanor" means a crime for which a sentence of not more than 90 days or a fine of not more than \$1000, or both, may be imposed.

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.