

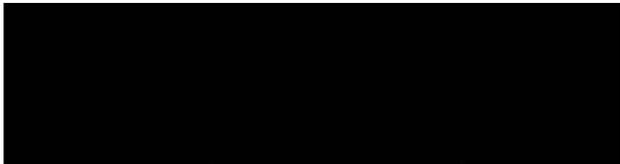
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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



**U.S. Citizenship  
and Immigration  
Services**

PUBLIC COpy



FILE:



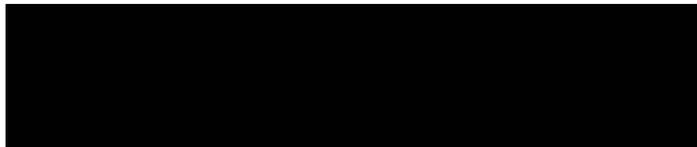
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OFFICE: VERMONT SERVICE CENTER

DATE: **APR 30 2008**

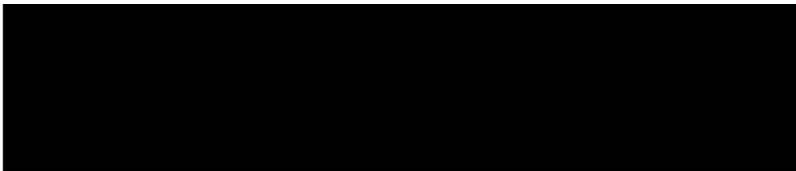
INRE:

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, Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 he found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his sexual battery conviction.

On appeal, counsel argues that the applicant meets the exception under section 212(a)(2)(A)(ii) of the Act.

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).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

"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. 8 C.F.R. § 244.1.

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 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 FBI report dated February 27, 2007, reveals the applicant's criminal history in the state of California as follows:

1. On December 5, 1998, the applicant was arrested under the alias \_\_\_\_\_ by the Los Angeles Police Department for sexual battery.
2. On April 11, 2000, the applicant was arrested under the alias \_\_\_\_\_ by the Los Angeles Police Department for kidnapping, commit robbery/rape.

On May 16, 2007, the director issued a Notice of Intent to Deny, which advised the applicant of his arrests on December 5, 1998 and April 11, 2000. The applicant was requested to submit the final court

disposition for each arrest. Counsel, in response, submitted the court disposition for number one, which reflects that on January 7, 1999, the applicant pled *nolo contendere* to violating section 243.4(d), sexual battery, a misdemeanor. He was ordered to serve 75 days in jail and placed on probation for three years in Case no

The director determined that the applicant did not meet the exception clause under section 212(a)(2)(A)(ii) of the Act. Section 212(a)(2)(A)(ii) of the Act provides for an exception to inadmissibility of an alien convicted of only one crime of moral turpitude if:

(II) the *maximum* penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was ultimately executed).

(Emphasis added).

The applicant does **qualify** under this exception as the maximum penalty possible the applicant could have received is six months in jail, and he was sentenced to a term of imprisonment of 75 days. The applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act; however, such ground of inadmissibility may be waived pursuant to section 244(c)(2)(A)(ii) of the Act; 8.C.F.R. § 244.3(b).

Counsel also submitted documentation from the Los Angeles County Superior Court, which stated that no record was found under the names [REDACTED] and [REDACTED] **for** the period January 1, 1987, through March 7, 2007.

As noted above, the FBI report reflects that the applicant was arrested by the Los Angeles Police Department on April 11, 2000, and the applicant has the burden to establish, with **affirmative evidence**, that an outstanding charge was dismissed or was in error. However, no evidence from the arresting agency has been submitted detailing the events that occurred subsequent to the applicant's arrest. The applicant has failed to provide the final outcome of his April 11, 2000, arrest detailed above and, therefore, has failed to meet his burden of proof.

Pursuant to 8 C.F.R. § 244.9(a), the applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. As such the issuance of a Form 1-601, Application for Waiver of Grounds of Excludability, is moot. Consequently, the director's decision to withdraw TPS 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.