

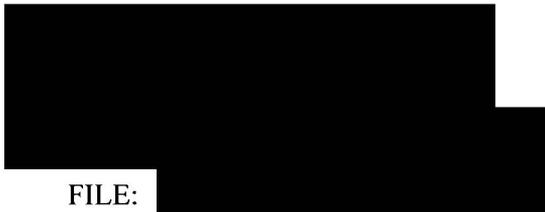
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U.S. Department of Homeland Security  
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U.S. Citizenship  
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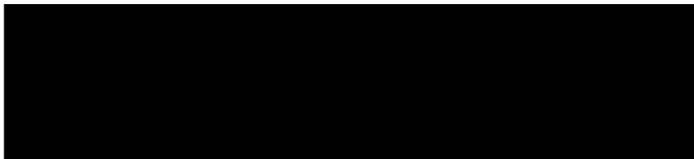


FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: JUN 18 2008  
[EAC 01 207 50618]

INRE: 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:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn, and the re-registration application denied, by the Director, Vermont Service Center.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 applicant's re-registration application for failure to provide information necessary to adjudicate his application, and withdrew the applicant's TPS because he found the applicant had failed to successfully re-register.

On appeal, counsel for the applicant asserts the applicant did not receive any notice that additional information was required, and should be granted the opportunity to respond. The applicant provides court records relating to his arrests and charges. The records confirm that the applicant has been convicted of a felony rape conviction, and is thus ineligible for TPS as a matter of law. The dispositions of the charges above were not known until the applicant submitted documentation on appeal, thus the director's decision was correct and based on the record as it was constituted at that time. Now, however, the basis of the application's denial will be ineligibility as a matter of law due to the applicant's conviction of at least two misdemeanors in the United States. 8 C.F.R. § 244.14(a)(1).

The applicant failed to reveal his criminal charges as required on the Form I-821, Application for Temporary Protected Status. Every proscribed form submitted shall be executed according to instructions on the form, failure to do so can lead to the dismissal of an application for abandonment. 8 C.F.R. § 103.2(a)(1); 8 C.F.R. § 103.2(13). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Any future proceedings under this application must include a waiver for failure to reveal criminal charges as required on the initial application.

The regulation at 8 C.F.R. § 244.14 states:

- (a) Authority of the director. The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following:
  - (1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;
  - (2) The alien has not remained continuously physically present in the United States from the date the alien was first granted Temporary Protected Status under this part. For the purpose of this provision, an alien granted Temporary Protected Status under this part shall be deemed not to have failed to maintain continuous physical presence in the United States if the alien departs the United States after first obtaining permission from the district director to travel pursuant to § 244.15;

- (3) The alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of Temporary Protected Status.

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.

On September 2, 2005, the director notified the applicant of his intent revoke his TPS and deny his re-registration application due to charges on his criminal record. The applicant's criminal attorney submitted a letter to CIS stating that the applicant had only been charged with the crimes listed, and not convicted. On June 28, 2007, the director sent the applicant's current counsel of record a Notice of Intent to Deny re-registration because the applicant was no longer eligible for TPS due to his criminal record. It is clear the applicant's assertion that he did not receive notice of an intent to deny is a fabrication.

The record reveals the following offenses:

- (1) On November 18, 2005, the applicant was convicted of Attempted Rape in the 3<sup>rd</sup> Degree, a Class E Felony, in the Suffolk County Court of New York. Case No. 00745-2005.

On appeal, the applicant asserts he did not receive notice from the director of any required information. However, as stated above, the director's request for court records was mailed directly to counsel.

The applicant is ineligible for TPS due to his record of at least one felony conviction, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw TPS will be affirmed.

In addition, the applicant is ineligible because he has been convicted of a particularly serious crime. An alien shall not be eligible for temporary protected status under this section if the alien has been convicted of a particularly serious crime and constitutes a danger to the community of the United States. Section 244(c)(2)(B)(ii); *see also* section 208(b)(2)(A)(ii).

The applicant was convicted of rape, is required to register as a sex offender, and was sentenced to six years probation. The applicant has been convicted of a particularly serious crime, and constitutes a danger to the United States as evidenced by the requirement to register as a sex offender. *Matter of N-A-M*, 24 I&N Dec. 336 (BIA 2007) (an offense need not be an aggravated felony under section 101(a)(43) of the Act in order to constitute a particularly serious crime); *Bogle-Martinez v. INS*, 52 F.3d 332 (9<sup>th</sup> Cir. 1995) (sex with a person under the age of 18 is a particularly serious crime). The appeal will be denied for this additional reason.

Finally, 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 crime of rape (No.1 above) involves moral turpitude. Matter of Z-, 7 I. & N. Dec. 253 (BIA 1956). Matter of B-, 5 I. & N. Dec. 538 (BIA 1953). Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his felony conviction detailed above.

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.