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**U.S. Citizenship
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Services**

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

MAR 11 2008

[WAC 99 125 51533]

[REDACTED]

CONSOLIDATED]

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:

[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 application was denied by the Director, California Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a citizen of Honduras 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 that the applicant had failed to submit requested court documentation relating to her criminal record.

On appeal, counsel asserts documentation relating to the applicant's 1993 arrest had been destroyed and that, as she was never convicted of a crime, she cannot provide an abstract of judgment or judgment and complaint because "none ever existed."

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).

The regulation at 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.
8 C.F.R. § 244.1.

The record reveals that the applicant was arrested by the Ventura Police Department on April 22, 1993, and charged with theft. Pursuant to a letter dated January 23, 2004, the applicant was requested to submit the final court disposition for this offense. In response, the applicant submitted a February 6, 2004, letter from the Superior Courts of California, County of Ventura, revealing that a search of its archives revealed that the applicant had been arrested for a violation of California Penal Code section 484(a), theft, but that the records had been destroyed in accordance with California law. This letter, however, revealed that the applicant was convicted of the offense and received some restraint on her liberty, in the form of jail or prison. The applicant was also placed on probation.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on March 9, 2004.

On appeal, counsel asserts that the documentation from the court does not indicate that the applicant pleaded to the offense, and that as the records were destroyed, she cannot provide any other documentation regarding the offense. However, the fact that her physical records have been destroyed does not mean the applicant was not convicted, that a conviction was dismissed or vacated on its merits, or that no electronic records remain. The burden is on the applicant to provide affinnative evidence that she is eligible for the benefit sought. Counsel further asserts that the applicant has never been convicted of any crime. However, the documentation submitted by the applicant herself clearly indicates that the applicant received punishment for the 1993 offense of theft. Thus, counsel's argument is without merit, and the record reflects that the applicant was convicted of theft in 1993.

Theft is a crime involving moral turpitude. *See Blumen v. Hajj*, 78 F.2d 833 (9th Cir. 1935). An alien is inadmissible if she has been convicted of a crime involving moral turpitude (other than a purely political offense), or if she admits having committed such crime, or if she admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

Section 212(a)(2)(A)(ii)(II) of the Act provides that clause (i)(I) shall not apply to an alien who has committed only one crime if the maximum penalty possible for the crime of which the alien was convicted did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a tenn of imprisonment in excess of six months (regardless of the extent to which the sentence was ultimately executed). Documentation submitted by the applicant does not specify whether she was convicted of grand theft (a felony) or petty theft (a misdemeanor) and does not include the sentence awarded by the court; therefore it cannot be detennined if the applicant meets the statutory exception to the moral turpitude clause. The court printout provided by the applicant indicates that the physical file was destroyed on April 26, 1996; however, it also indicates that the file was "Archived" on May 15, 1998. It is apparent that the court maintains some sort of record of this conviction.

The applicant has therefore failed to provide sufficient evidence of the final court disposition of her arrest and conviction as discussed above. Specifically, as the documentation does not reflect the exact nature of the punishment imposed by the court, it cannot be detennined whether the applicant is inadmissible to the United States.

The applicant is ineligible for TPS because of her failure to provide infonnation necessary for the adjudication of her application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the application for this reason will be affinned.

The record reflects that subsequent to the director's decision on March 9, 2004, the applicant was arrested by the Ventura Sheriffs Office on July 31, 2005, and charged with driving under the influence of alcohol or drugs and driving under the influence of alcohol with a blood alcohol content of .08 percent or more. The record does not contain a final disposition of these offenses.

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.



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ORDER: The appeal is dismissed.