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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: APR 29 2005
[WAC 01 173 56696]

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: Self-represented

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and 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 the applicant had been convicted of a felony or two or more misdemeanors committed in the United States.

On appeal, the applicant states that he is eligible for the TPS program, that he has maintained continuous residence in the United State since 1985, and that he needs his employment authorization card to work and support his family.

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.

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 reveals the following offenses:

- (1) On May 29, 1996, in the Municipal Court of Los Angeles, Central Arraignment Judicial, County of Los Angeles, California, Case No. [REDACTED] the applicant was indicted for Count 1, inflicting corporal injury on a spouse, 273.5(a), a misdemeanor; and Count 2, battery, 242 PC, a misdemeanor. On May 29, 1996, the applicant was convicted of Count 1. He was placed on probation for a period of 36 months, ordered to pay \$236 in fines and costs, and perform 20 days of “Cal Trans.” Count 2 was dismissed.
- (2) On January 23, 1991, in the Municipal Court of Los Angeles Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date January 18, 1991), the applicant was indicted for Count 1, unlawfully driving or taking of a vehicle, 10851(a) VC, a felony; and Count 2, receiving stolen property, 496.1 PC, a felony. On February 26, 1991, the applicant was convicted of Count 2. He was sentenced to serve 90 days in jail, placed on felony probation for a period of 36 months, and ordered to pay \$100 in fines and costs. Count 1 was dismissed.

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 inflicting corporal injury on a spouse involves moral turpitude (No. 1 above). *Grageda v. INS*, 12 F.3d 919 (9th Cir. 1993); *Matter of Phong Nguyen Tran*, 21 I&N Dec. 291 (BIA 1996). Likewise, receiving stolen property (with guilty knowledge) involves moral turpitude (No. 2 above). *Wadman v. INS*, 329 F.2d 812 (9th Cir. 1964); *Matter of A-*, 7 I&N Dec. 626 (BIA

1957); *Matter of De La Nunes*, 18 I&N Dec. 140 (BIA 1981). The court's indictment report shows that the applicant did willfully and unlawfully buy, receive, conceal, sell, withhold, and aid in concealing, selling, and withholding property (a 1984 Toyota 4x4 pickup), knowing that said property had been stolen and obtained by extortion. Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his convictions of Nos. 1 and 2 above, found to involve moral turpitude.

The applicant is ineligible for TPS due to his felony conviction, and because he is inadmissible to the United States pursuant to 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.