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

PUBLIC COPY



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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: JUN 15 2005

[WAC 01 167 50609]

IN RE:

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:

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 two or more misdemeanors committed in the United States.

On appeal, the applicant submits a statement and additional evidence.

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following offenses:

- (1) On April 30, 1995, Case No. [REDACTED] the applicant was arrested and charged with grand theft, 487(a) PC. On May 11, 1995, in the Superior Court Northern Branch, County of San Mateo, California, the complaint was amended to add Count 2, theft, 484 PC, a misdemeanor. The applicant entered a plea of nolo contendere as to Count 2, and he was placed on probation for a period of 18 months, and ordered to spend 3 days in the county jail. Count 1 was dismissed.
- (2) On April 10, 1996, in the Municipal Court of Burbank Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date February 18, 1996), the applicant was convicted of theft of property, 484(a) PC, a misdemeanor. He was placed on probation for a period of 3 years, ordered to spend one day in the county jail, and pay \$945 in fines and costs.
- (3) On July 13, 2001, in the Municipal Court of Los Angeles, Criminal Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date July 11, 2001), the applicant was indicted for Count 1, assault with a deadly weapon/instrument, 245(a)(1) PC, a misdemeanor; Count 2, battery, 242 PC, a misdemeanor; Count 3, making a terrorist threat, 422 PC, a misdemeanor; and Count 4, vandalism, 594(a) PC, a misdemeanor. On September 5, 2001, the applicant was convicted of Counts 1 and 4. He was placed on probation for a period of 36

months under the condition that he serve 90 days in the county jail, and ordered to pay a restitution fine in the amount of \$100 as to Count 1. He was placed on probation for a period of 36 months under the condition that he serve 10 days in the county jail, and ordered to pay a restitution fine in the amount of \$100 as to Count 4. Counts 2 and 3 were dismissed.

- (4) The Federal Bureau of Investigation (FBI) fingerprint results report shows that on July 12, 2001, in Los Angeles, California, the applicant was arrested for Count 1, attempt to commit a crime, murder; and Count 2, murder, second degree. The final court disposition of this arrest is not contained in the record, nor is there evidence that this arrest relates to No. 3 above.
- (5) The FBI report shows that on November 5, 2001, in Los Angeles, California, the applicant was arrested for force/assault with a deadly weapon-not firearm, great bodily injury. The final court disposition of this arrest is not contained in the record.

On appeal, the applicant asserts that he petitioned the court to dismiss his conviction under Case No. [REDACTED] (No. 1 above), but that his petition is still pending with the court. The applicant also asserts that the court issued a dismissal of his conviction under Case N [REDACTED] (No. 2 above).

The applicant submits the records of the Municipal Court of Burbank indicating that on August 26, 2003, the court set aside and vacated the plea or conviction (No. 2 above), entered a plea of not guilty, and dismissed the case pursuant to 1203.4 PC. However, the Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), held that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. Therefore, despite the dismissal of the applicant's conviction(s), the applicant remains convicted, for immigration purposes, of the misdemeanor offenses detailed in (Nos. 1 and 2 above).

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 theft, whether grand or petty (Nos. 1 and 2 above), involves moral turpitude. *Matter of Scarpulla*, 15 I&N Dec. 139 (BIA 1974); *Morasch v. INS*, 363 F.2d 30 (9th Cir. 1966). Likewise, the crime of assault with a deadly weapon (No. 3 above) involves moral turpitude. *Matter of Goodalle*, 12 I&N Dec. 106 (BIA 1967); *Matter of Baker*, 15 I&N Dec. 50 (BIA 1974); *Matter of Ptsai*, 12 I&N 790 (BIA 1968). Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his three misdemeanor convictions found to be crimes of moral turpitude.

The applicant is ineligible for TPS due to his four misdemeanor convictions, detailed in Nos. 1, 2, and 3 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 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.