



U.S. Citizenship  
and Immigration  
Services

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FILE:

[WAC 99 112 52651]  
[WAC 05 068 76859]

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

JAN 24 2007

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.

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

Robert P. Wiemann, Chief  
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 is a native and citizen of Honduras who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on May 25, 2000. The director subsequently withdrew the applicant's TPS on December 15, 2005, when it was determined that the applicant had been convicted of three misdemeanors.

The director may withdraw the status of an alien granted TPS at any time if it is found that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

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.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, the applicant was requested on June 9, 2005, to submit the final court dispositions of all of her arrests including arrests listed in the FBI report. In response, the applicant submitted the court dispositions of the following offenses:

- (1) On January 17, 2002, in the Municipal Court of Airport Branch Judicial District, County of Los Angeles, California, under Case No. [REDACTED] (arrest date December 22, 2001), the applicant (name used: [REDACTED]) was convicted of theft of property, 484(a) PC, a misdemeanor. She was placed on probation for a period of 18 months, and ordered to pay \$603 in fines and costs.
- (2) On July 31, 2002, the applicant was arrested for the felony offense of burglary, 459 PC. On August 14, 2002, in the San Bernardino County Court, California, Case No. [REDACTED], the applicant (name used: [REDACTED]) was indicted for Count 1, burglary 2<sup>nd</sup> degree, 459 PC, a

misdemeanor; and Count 3, theft of personal property, 484(a) PC, a misdemeanor. The court document does not list Count 2. On September 3, 2002, the applicant was convicted of Counts 1 and 3. She was placed on probation for a period of 36 months, and ordered to pay \$500 in fines and costs as to both Counts 1 and 3.

The director determined that the applicant was ineligible for TPS based on her three misdemeanor convictions and withdrew the initial TPS application December 15, 2005.

On appeal, the applicant states that she is appealing the denial of her TPS on the ground that this is the only relief she has, as a Honduran, and it will be hard for her to support her U.S.-born children without a work permit. She requests that she be granted another opportunity because those mistakes were committed years ago and she has complied with all of the instructions.

A time limitation, however, is not provided for criminal activities for applicants for TPS under section 244(c)(2)(b) of the Act, and as provided in 8 C.F.R. § 244.4(a). Clearly, the applicant must meet the eligibility requirements at the time the application is filed, as well as at the time the application is adjudicated.

Additionally, theft or larceny, whether grand or petty, is a crime involving moral turpitude. *Matter of Scarpulla*, 15 I&N Dec. 139 (BIA 1974); *Morasch v. INS*, 363 F.2d 30 (9th Cir. 1966). Likewise, burglary (with intent to commit theft) is a crime involving moral turpitude. *Matter of M-*, 2 I&N Dec. 721 (BIA 1982); *Matter of Leyva*, 16 I&N Dec. 118 (BIA 1977); *Matter of Frentescu*, 18 I&N Dec. 244, 245 (BIA 1982). Therefore, the applicant is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, due to her three misdemeanor convictions found to be crimes of moral turpitude.

The applicant is ineligible for TPS due to her three misdemeanor convictions, and because she 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. There is no waiver available to an alien found inadmissible under this section. 8 C.F.R. § 244.3(c)(1). Nor is there a waiver available for convictions of a felony or two or more misdemeanors committed in the United States. Consequently, the director's decision to withdraw 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.