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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: AUG 22 2005
[WAC 02 235 51706]

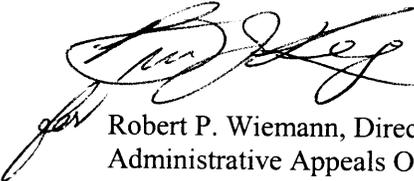
IN RE: Applicant: [REDACTED]

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 two or more misdemeanors committed in the United States.

On appeal, the applicant asserts that he cannot accept the director's decision because he has been in the United States since September 15, 1990. He states that he has definitely learned his lesson and requests a second chance to keep his temporary work permit.

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 August 17, 2001, in the Superior Court of California, County of Orange, North Judicial Center, California, Case No. [REDACTED] (arrest date July 9, 2001), the applicant was convicted of driving without a valid license, 12500(a) VC, a misdemeanor. He was placed on probation for a period of 3 years, and ordered to pay \$300 in fines and costs.
- (2) On June 7, 2002, in the Superior Court of California, County of Orange, North Judicial Center, California, Case No. [REDACTED] (arrest date June 6, 2002), the applicant was indicted for Count 1, assault with a deadly weapon, 245(a)(1) PC, a misdemeanor; Count 2, injuring or tampering with a vehicle, 10852 VC, a misdemeanor; and Count 3, maliciously injuring and destroying real or personal property, 594 PC, a misdemeanor. On June 10, 2002, the applicant was convicted of Counts 1 and 3. He was placed on probation for a period of 3 years, ordered to serve 45 days in the county jail, complete 8 hours of community service, and pay \$400 in fines and costs as to Count 1. He was placed on probation for a period of 3 years, and ordered to complete 8 hours of community service as to Count 3. Count 2 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 assault with a deadly weapon 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). Likewise, malicious destruction of property involves moral turpitude. *Matter of M-*, 3 I&N Dec. 272 (BIA 1948). Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his misdemeanor convictions found to be crimes of moral turpitude.

The applicant is ineligible for TPS due to his three misdemeanor convictions 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.