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**U.S. Citizenship
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Services**

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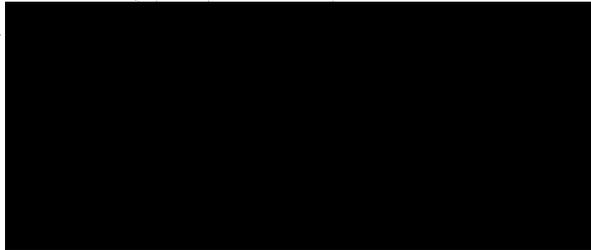


FILE: [REDACTED]
[EAC 01 248 50805]

OFFICE: VERMONT SERVICE CENTER

DATE: **MAY 25 2005**

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, Vermont Service Center. The application 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 he found the applicant ineligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(A) due to her prior misdemeanor convictions.

On appeal, the applicant argues that she is eligible for TPS.

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/she has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he/she admits having committed such crime, or if he/she 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 listed under the name of [REDACTED]

- (1) On December 14, 2000, the applicant was convicted of one count of petit larceny in Chesterfield, Virginia, stemming from an arrest on May 12, 2000;
- (2) On December 14, 2000, the applicant was convicted of one count of petit larceny in Chesterfield, Virginia, stemming from an arrest on June 9, 2000; and
- (3) On December 14, 2000, the applicant was convicted of one count of petit larceny in Chesterfield, Virginia, stemming from an arrest on July 1, 2000.

On appeal, the applicant argues that it was her understanding that "if the offense was not a felony, or misdemeanor [sic] and I was not in prison for more than five days then I can appeal."

The applicant's argument is not sound. Petit larceny in Virginia is a Class 1 Misdemeanor and carries a possible penalty of up to 12 months incarceration. Therefore, these convictions satisfy the definition of misdemeanors, regardless of the term actually served. The applicant is ineligible for TPS due to her record of at least two or more prior misdemeanor convictions, as detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

Although the issue was not raised by the director, 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 petit larceny involves moral turpitude. *Matter of Garcia*, 11 I&N Dec. 521 (BIA 1966). Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to her misdemeanor convictions detailed above, and the application must also be denied for this reason.

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.