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

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FILE: [REDACTED]
[WAC 03 035 51878]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: **OCT 03 2005**

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 (AAO) on appeal. The appeal will be rejected.

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 determined that the applicant was ineligible for TPS under section 244(c)(2)(B)(i) of the Act because she had been convicted of two misdemeanors committed in the United States.

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The director's decision of denial, dated May 5, 2004, clearly advised the applicant that any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Coupled with three days for mailing, the appeal, in this case, should have been filed on or before June 7, 2004. The Form I-290B, Notice of Appeal, is very clear in indicating that the appeal is not to be sent directly to the AAO, but, rather, to the "office which made the unfavorable decision." The applicant, nevertheless, sent her appeal to the AAO. The appeal is not considered properly received until it is received by the Service Center that rendered the unfavorable decision. The appeal was properly received at the California Service Center on July 15, 2004.

The applicant failed to file a timely appeal; therefore, the appeal will be rejected.

The Federal Bureau of Investigation (FBI) fingerprint results report shows the following offenses:

- (1) The applicant was arrested on May 25, 1994, in Brea, California, for petty theft, 488 PC. The FBI report shows that the applicant was subsequently convicted of this offense, and she was placed on probation for a period of 36 months, and ordered to pay a fine.
- (2) The applicant was arrested on June 14, 1996, in Montebello, California, for petty theft. The FBI report shows that the applicant was subsequently convicted of theft, 484(a) PC, a misdemeanor, and that she was placed on probation for a period of 24 months, and ordered to spend 5 days in jail.
- (3) The applicant was arrested on August 3, 1996, in Norwalk, California, and charged with petty theft. The result of this arrest is not shown on the FBI report.

Based on information contained in the FBI report, the director determined that the applicant was ineligible for TPS because she was convicted of two misdemeanor offenses.

The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based

on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

The record of proceeding, in this case, is devoid of the complete, actual final court dispositions of the applicant's arrests to establish that she was in fact convicted of the crimes listed in the FBI report. Further, there is no evidence that the applicant was provided the opportunity to submit the court dispositions of all her arrests.

However, the applicant, on appeal, asserts that her two misdemeanor offenses are of the nature that qualify for expungements under California Penal Code Section 1203.4. Therefore, she is requesting a 60-day extension so that "a proper brief and evidence of good cause may be shown." To date, no additional statement or evidence has been provided.

Furthermore, even if the applicant's convictions were to be dismissed or expunged, 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.

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). Convictions of the criminal offenses listed in Nos. 1, 2, and 3 above may render the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. However, the actual final court dispositions of these charges are not included in the record.

Beyond the decision of the director, it is noted that the applicant filed her TPS application on September 11, 2002, after the initial registration period for El Salvadorans (from March 9, 2001 to September 9, 2002) had closed. There is no evidence in the record that the applicant fell within the provisions described in 8 C.F.R. § 244.2(f)(2).

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is rejected.