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U.S. Citizenship
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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE:

OCT 27 2005

[WAC 01 221 54196]

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.

Cindy N. Gomez for

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 is 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 because he had been convicted of a felony offense committed in the United States. The director, therefore, denied the application.

On appeal, counsel submits a statement. While counsel indicated that he was sending a brief and/or evidence within 30 days, to date, no additional statement or evidence has been provided; therefore, the record is considered complete.

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 November 1, 1986, the applicant was arrested for Count 1, rape by force/fear, 261(2) PC, a felony; and Count 2, kidnapping, 207 PC, a felony. On October 16, 1987, in the Superior Court, County of Los Angeles, Compton, California, the applicant was convicted of Count 2. He was placed on probation for a period of 3 years, and ordered to spend 360 days in jail. The applicant was acquitted of Count 1.
- (2) The California Department of Motor Vehicles (DMV) report, contained in the record of proceeding, shows that on October 4, 1986, under Docket No. [REDACTED] the applicant was arrested for driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. While the DMV report shows that the applicant was convicted of this offense on December 30, 1986, the actual court disposition is not contained in the record.
- (3) The DMV report shows that on December 28, 1986, under Docket No. [REDACTED] the applicant was arrested for driving without a valid driver's license, 12500(a) VC, a misdemeanor, and failure to appear, 40508(a) VC, a misdemeanor. While the DMV report shows that the applicant was convicted of these offenses on May 25, 1988, the actual court disposition is not contained in the record.
- (4) The DMV report shows that on May 6, 1989, under Docket No. [REDACTED] the applicant was arrested for driving under the influence, 23152(a) VC, a misdemeanor. While the DMV report

shows that the applicant was convicted of this offense on May 8, 1989, the actual court disposition is not contained in the record.

- (5) The DMV report shows that on June 12, 1990, under Docket No. [REDACTED] the applicant was arrested for driving while license suspended or revoked, 14601.2 VC, a misdemeanor. While the DMV report shows that the applicant was convicted of this offense on July 27, 1990, the actual court disposition is not contained in the record.

On appeal, counsel asserts that the applicant does not concede that he has been convicted of any felony that would make him ineligible for TPS.

Despite counsel's assertion, it is noted that the applicant did affirm under penalty of perjury on his TPS application that he was arrested for "rap [sic] and kidnapping" and sentenced to "1 year jail: Wesside, and Los Angeles/Fine: \$2,000." Furthermore, as detailed in No. 1 above, the record shows that the applicant was convicted on October 16, 1987, of the felony offense of kidnapping. Additionally, it appears that the applicant was convicted of at least five misdemeanors detailed in Nos. 2, 3, 4, and 5 above; however, the actual court dispositions of these misdemeanor offenses are not included in the record.

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 kidnapping involves moral turpitude. *Matter of C-M-*, 9 I&N Dec. 487 (BIA 1961); *Matter of Nakoi*, 14 I&N Dec. 208 (BIA 1972). Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his felony conviction found to be a crime of moral turpitude.

The applicant is ineligible for TPS due to his felony conviction, 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.