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**U.S. Citizenship
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FILE: [REDACTED]
[EAC 01 205 54540]

OFFICE: VERMONT SERVICE CENTER

DATE: **JUL 20 2006**

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.

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, Vermont Service Center. The application 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 denied the application because she found the applicant had been convicted of two or more misdemeanors.

On appeal, the applicant submits a statement and additional evidence.

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 May 15, 2001, the applicant pled guilty in the East Boston District Court, East Boston, Massachusetts, to: (1) destruction of property valued at greater than \$250 in violation of section 266/127A of the General Laws of Massachusetts, a misdemeanor, and (2) carrying a dangerous weapon in violation of section 269/10(b), a misdemeanor. The court found sufficient facts for conviction on both charges, but continued the case without a guilty finding until April 15, 2002. On June 7, 2002, both charges were dismissed on the recommendation of the Probation Department. (Date of Arrest: February 26, 2001).
- (2) On August 17, 2004, the applicant pled guilty in the East Boston District Court, East Boston, Massachusetts, to assault with a dangerous weapon against a person sixty years or older in violation of section 265/15B(a), a felony. (Date of Arrest: March 25, 2004)

On appeal, the applicant states that the charge detailed in No. (2) above was continued without a guilty finding and he was placed on probation until February 17, 2005. The applicant submits an additional court disposition document indicating that the applicant pled guilty to the charge detailed in No. (2) above, on August 17, 2004. The court found sufficient facts for conviction, but continued the case without a guilty

finding and placed the applicant on probation until February 17, 2005. To date, the applicant has not provided the final court disposition of this offense.

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilty, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The applicant pled guilty to the charges detailed in Nos. (1) and (2) above, and his liberty was restrained in that he was placed on probation. Therefore, the applicant has been "convicted" of these offenses for immigration purposes.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, detailed in No. (1) 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.

Beyond the decision of the director, the applicant is also ineligible for TPS because he pled guilty to a felony as detailed in No. (2) above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.2(a). Furthermore, the applicant has been convicted of a crime involving moral turpitude. 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 against a person sixty years or older (No. 2 above) involves moral turpitude. *Matter of O-*, 3 I&N. Dec. 193 (BIA 1948) - Section 6195 of the General Statutes of Connecticut. Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his felony conviction detailed above.

Finally, the record reveals that the applicant, under penalty of perjury, fraudulently indicated on Part 4, Line 2.a., and d., of his TPS application that he had not been convicted of a felony or two or more misdemeanors and that he had never been arrested. This misrepresentation of a material fact in an application for immigration benefits renders the applicant inadmissible under section 212(a)(6)(C) of the Act. Therefore, the application also must be denied for these reasons.

The application will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.