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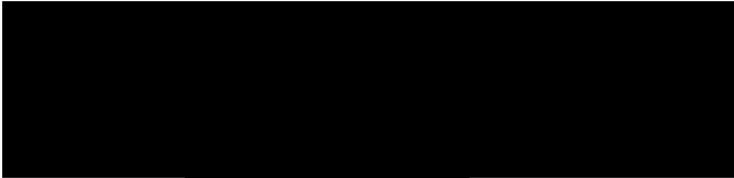
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**U.S. Citizenship
and Immigration
Services**

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NOV 20 2006



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:
[WAC 06 046 52148]

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:



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.

for 
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed, and the previous decision of the AAO, dismissing the appeal, will be affirmed.

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 on October 29, 2003, after determining that the applicant had failed to respond to a request to provide police clearances from every city where she had lived in the United States, and the certified final court disposition of all arrests.

The AAO reviewed the record of proceeding, including court documents furnished on appeal, and noted that the applicant's arrest on August 5, 1995, for driving under the influence of alcohol/drugs with bodily injury, 23153(a) VC; driving with .08 percent blood alcohol level or more, 23152(b) VC; and unlicensed driver, 12500(a) VC, was dismissed. However, the applicant had failed to furnish the court documents relating to her arrest for "welfare fraud in 1995." The AAO, therefore, affirmed the director's decision, and dismissed the appeal on February 3, 2005.

On motion, counsel submits final court dispositions of the applicant's arrest on March 1, 1991, for welfare fraud, and arrest on August 5, 1995 (noted above).

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 March 27, 1995, in the Municipal Court of Criminal Justice Center (LAC) Judicial, County of Los Angeles, State of California, Case No. [REDACTED] (arrest date March 1, 1991), the applicant was indicted for Count 1, welfare fraud, 10980(c)(2) Welfare and Institutions Code (W&I), a felony; Count 2, perjury, 118 PC, a felony; Count 3, perjury, 118 PC, a felony; and Count 4, perjury, 118 PC, a felony. On September 27, 1995, the applicant entered a plea of *nolo contendere* as to Count 1, and the court found the applicant guilty as to Count 1. Imposition of sentence was suspended and the applicant was placed on probation for a period of 5 years under the condition that she serve 4 days in jail, she was ordered to perform 100 hours of community service, and pay \$10,511 in fines, costs, and restitution. Counts 2, 3, and 4 were dismissed.
- (2) On August 23, 1995, in the Municipal Court of Metropolitan Courthouse Judicial, County of Los Angeles, State of California, Case No. [REDACTED] (arrest date August 5, 1995), the applicant was indicted for Count 1, driving under the influence of alcohol/drugs with bodily injury, 23153(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23153(b) VC, a misdemeanor; and Count 3, unlicensed driver, 12500(a) VC, a misdemeanor. The applicant was not present in court for her arraignment on August 30, 1995; therefore, a bench warrant was issued. On March 10, 2003, the applicant appeared in court for arraignment, and the pretrial hearing was continued. On April 18, 2003, the court dismissed the case and terminated proceedings.
- (3) As noted by the AAO in its decision to dismiss the appeal on February 3, 2005, the Federal Bureau of Investigation (FBI) fingerprint results report shows that on August 5, 1995, in Norwalk, California, the applicant was arrested and charged with Count 1, driving under the influence of alcohol/drugs causing bodily injury, a felony; and Count 2, perjury, a felony. It is not clear in the record whether this case relates to No. 2 above, or that the charges were amended by the court.

On appeal, counsel asserts that the applicant suffered only one conviction, a misdemeanor violation of § 10980(c)(2) W&I (No. 1 above), as affirmed by the order of the court that he is enclosing. Counsel further asserts that the applicant meets the petty offense exception; therefore, she is not inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act.

The record indicates that January 28, 2004, more than eight years after the applicant's felony conviction (after the completion of the applicant's court probation), the court deemed the felony conviction of welfare fraud (No. 1 above) to be a misdemeanor, the plea, verdict, or finding of guilt was set aside and vacated, a plea of not guilty was entered, and the case was dismissed pursuant to 1203.4 PC.

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, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*. Therefore, the applicant remains convicted, for immigration purposes, of the felony offense.

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). Moral turpitude attaches to any crime against property which involves "fraud" whether it entails fraud against the Government or an individual. Thus, any crime involving fraud is a crime involving moral turpitude. *Burr v. INS*, 350 F.2d 87, 91 (9th Cir. 1965).

Section 212(a)(2)(A)(ii) of the Act provides for an exception to inadmissibility of an alien convicted of only one crime of moral turpitude, where the maximum penalty possible for the crime did not exceed imprisonment for one year and the alien was not sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was ultimately executed). According to section 10980(c)(2) W&I, the crime of welfare fraud is punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, or by imprisonment in the county jail for a period of not more than one year. The applicant, in this case, was charged with the felony offense of 10980(c)(2), the applicant entered a plea of *nolo contendere* to the felony offense, and the court found the applicant guilty of the felony offense. The maximum penalty possible for the felony offense, in this case, is three years. Therefore, despite counsel's assertion, the applicant does not qualify under this exception. Sections 212(a)(2)(A)(ii) and 101(a)(48)(B) of the Act.

The applicant is ineligible for TPS due to her felony conviction, and because she is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, based on her conviction of a crime involving moral turpitude. Sections 244(c)(2)(B)(i) and 244(c)(1)(A)(iii) of the Act.

Furthermore, pursuant to 8 C.F.R. 103.5(a)(1)(i), any motion to reopen a proceeding before the Service, now, Citizenship and Immigration Services (CIS), filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of CIS where it is demonstrated that the delay was reasonable and was beyond the control of the applicant.

The applicant, in this case, had 30 days from February 3, 2005, in which to file a motion to reopen or a motion to reconsider. This motion was received by the California Service Center on November 25, 2005, more than nine months after the AAO dismissed the appeal. The applicant neither addressed nor submitted any evidence to demonstrate that the delay was reasonable and was beyond her control.

Accordingly, the motion will be dismissed, and the previous decision of the AAO will be affirmed.

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 motion is dismissed. The decision of the AAO dated February 3, 2005, dismissing the appeal, is affirmed.