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FILE:



[WAC 01 173 53833]

OFFICE: CALIFORNIA SERVICE CENTER DATE: OCT 03 2006

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:



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, California Service Center, and is now before the Administrative Appeals Office (AAO) 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 he found that the applicant had been convicted of a felony or two or more misdemeanor offenses.

On appeal, counsel submits a statement.

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following offenses:

- (1) On September 14, 1982, the applicant was arrested and charged with robbery in the first degree in violation of section 459 PC, a felony. The applicant's deportation record, A24 929 116, contains a document from the Superior Court of California, County of Los Angeles, indicating that the applicant pled guilty to this charge on March 23, 1982, and was sentenced to two years in prison. (Case No. [REDACTED])
- (2) On July 12, 1983, the applicant was charged with possession of alcohol or marijuana in prison in violation of 4573-6 PC, a felony. (Arrest Date: May 9,

1983). The applicant's Federal Bureau of Investigation (FBI) fingerprint results report indicates that the applicant pled guilty to this charge and was sentenced to serve 60 additional days in jail; however, the record does not contain a court document reflecting the final court disposition of this charge.

The director denied the application on March 3, 2004, because he found the applicant had been convicted of a felony.

On appeal, counsel for the applicant states that the applicant has retained a criminal attorney, Mark A. Davis, to vacate the applicant's guilty plea on the charge of robbery in the first degree.

To date, Mr. Davis has not provided a document from the Superior Court of California, County of Los Angeles, vacating the applicant's guilty plea to robbery in the first degree. Nevertheless, 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*, 22 I&N Dec. 512, (BIA 1999). Even if Mr. Davis were to obtain an expungement of the applicant's felony conviction, the applicant would remain ineligible for TPS because of his record of one felony conviction.

The applicant is ineligible for TPS due to his record of at least one felony conviction, 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.

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 robbery in the first degree involves moral turpitude. *Matter of Romandia-Herrerros*, 11 I&N Dec. 772 (BIA 1966). See also *Matter of Martin*, 18 I&N Dec. 226 (BIA 1982). *Matter of Carballe*, 19 I&N Dec. 357 (BIA 1986). *Ashby v. INS*, 961 F.2d 555 (4<sup>th</sup> Cir. 1992). *Matter of Burbano*, I.D. 33229 (BIA 1994). *Chen v. INS*, 1996 WL 328448 (1<sup>st</sup> Cir. 6/2096). Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his felony conviction detailed above.

While the issue of the applicant's inadmissibility was not raised by the director, the applicant is also ineligible for TPS due to his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. Therefore, the application must also be denied for this reason. There is no waiver available for inadmissibility under this section of the Act.

The applicant has also failed to submit sufficient evidence to establish his identity and nationality as described at 8 C.F.R. § 244.9(a)(1). Additionally, he has not established his qualifying continuous residence and continuous physical presence in the United States during the requisite periods as described at 8 C.F.R. § 244.2(b) and (c). Therefore, the application also must be denied for these reasons.

It is noted that the applicant was handed over to the custody of the Immigration and Naturalization Service after his release from jail and placed in removal proceedings. On October 13, 1983, an Immigration Judge in El Centro, California, ordered the applicant removed to El Salvador. The applicant was subsequently removed to El Salvador at Los Angeles, California, via Taca International Airlines Flight [REDACTED] on October 20, 1983.

The application will be denied 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.