**U.S. Department of Homeland Security**
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] OFFICE: CALIFORNIA SERVICE CENTER DATE: SEP 1 2 2006
[WAC 05 076 73382]

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:

[redacted]

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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nicaragua 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 the applicant had been convicted of two felony offenses committed in the United States.

On appeal, counsel asserts that the "respondent's indiscretions are not enough to derail his application for benefits under the TPS program." He resubmits arrests reports and court documents previously furnished and contained in the record of proceeding.

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 pubic 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.
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> *Misdemeanor* means a crime committed in the United States, either
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> (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.
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> 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.

The record of proceeding reveals the following in Florida:

(1) On August 11, 1990, under Case [redacted] the applicant was arrested for "municipal ord viol" (disorderly conduct-fighting), a misdemeanor. He was convicted on August 12, 1990, and sentenced to credit for time served.
(2) July 11, 1992, the applicant was arrested for possession of cannabis under Case No. M92-8832. The case was transferred and closed on July 14, 1992 (see No. 3 below).
(3) On July 11, 1992, under Case [redacted] the applicant was arrested for possession of marijuana, FS 893.13, a misdemeanor. He was convicted on August 19, 1992, and sentenced to credit for time served.
(4) On May 12, 1993, under Case [redacted] the applicant was arrested for obstruction of a public street, FS 316.2045, a misdemeanor. On February 25, 1994, the case was dismissed for lack of prosecution.
(5) On September 25, 1993, under Case [redacted] the applicant was arrested for Count 1, trespassing after warning, and Count 2, obstruction of a public street. The case was dismissed for lack of prosecution on January 6, 1994.
(6) October 1, 1993, under Case [redacted] the applicant was arrested for trespassing, FS 810.09, a misdemeanor. He was convicted on December 3, 1993, and placed in community service.
(7) On October 13, 1993, under Case [redacted] the applicant was arrested for trespassing, FS 810.09, a misdemeanor. He was convicted of the offense on October 14, 1993, and sentenced to credit for time served.
(8) On January 7, 1994, under Case [redacted] the applicant was arrested for obstructing of a public street. The court's final disposition of this arrest is not contained in the record.
(9) On May 13, 1994, under Case [redacted] the applicant was arrested for trespass after warning, FS 810.09, a misdemeanor. On June 14, 1994, the applicant was convicted of the offense, and he was ordered to pay $109 in fines and costs.

(10) On March 25, 1995, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, under arrest date March 4, 1994), the applicant, in a 6-count indictment, was convicted of Count 5, inspection certificate violation/forgery, Florida Statute (FS) 325.216 and 777.011, a felony; and Count 6, commercial bribery, FS 836.16 and 777.011, a felony. He was placed on probation for a period of one year, and ordered to pay $200 in fines and costs.

(11) On December 2, 1995, under Case the applicant was arrested for obstructing traffic in order to solicit business, FS 316.2045(2), a misdemeanor. On December 3, 1995, the applicant was convicted of the offense, and he was sentenced to credit for time served.

(12) On January 16, 1996, under Case the applicant was arrested for obstruction of public streets, FS 316.2045(2), a misdemeanor. On January 17, 1996, the applicant entered a plea of guilty to the offense, and he was sentenced to credit for time served.

(13) On January 23, 1996, under Case the applicant was arrested for obstruction of public streets, FS 316.2045, a misdemeanor. On January 24, 1996, the applicant entered a plea of guilty to the offense, and he was sentenced to credit for time served.

(14) On February 20, 1997, under Case the applicant was arrested for obstruction of public street, FS 316.2045, a misdemeanor. On February 21, 1997, the applicant entered a plea of guilty to the offense, and he was sentenced to credit for time served.

(15) On April 8, 1997, under Case the applicant was arrested for possession of marijuana, FS 893.13, a misdemeanor. On April 9, 1997, the applicant entered a plea of guilty to the offense, and he was sentenced to credit for time served.

(16) On October 7, 1997, under Case the applicant was arrested for loitering and prowling, a misdemeanor. On October 8, 1997, the case was dismissed.

(17) On January 25, 1998, under Case the applicant was arrested for aggravated battery, FS 784.045(1), a felony. On February 17, 1999, a *nolle pros* was entered on the case.

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.

Moral turpitude attaches to any crime against property that 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). Likewise, bribery is a crime involving moral turpitude. *Matter of R-*, 1 I&N Dec. 118 (BIA 1941); *Ng Sui Wing v. U.S.*, 46 F.2d 755 (7th Cir. 1931); *Matter of V-*, 4 I&N Dec. 100 (BIA 1950). The applicant is, therefore, inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, based on his two felony convictions found to be crimes of moral turpitude (No. 10 above).

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 applicant is also inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) of the Act, based on his convictions of possession of marijuana, detailed in Nos. 3 and 15 above.

Despite counsel's assertions on appeal, the applicant is ineligible for TPS due to his convictions of two felonies (No. 10 above) and 10 misdemeanors (Nos. 1, 3, 6, 7, 9, 11, 12, 13, 14, and 15 above), and because he is inadmissible to the United States under sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(i)(II) 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.

Beyond the decision of the director, it is noted that the applicant filed his TPS application on December 15, 2004, after the initial registration period for Nicaraguans (from January 5, 1999 to August 20, 1999) had closed. The record shows that the applicant fell within the provisions described in 8 C.F.R. § 244.2(f)(2), because during the initial registration period the applicant had an application for adjustment of status under section 202 of the Nicaraguan Adjustment and Central Relief Act (NACARA), that was pending or subject to further review or appeal. However, that application was denied by the Immigration Judge (IJ) on March 11, 1999, in Miami, Florida; the Board of Immigration Appeals (BIA) dismissed the appeal and affirmed the IJ's decision on July 11, 2002; and the BIA denied the motion to reopen on March 17, 2004. The applicant had a 60-day period following the termination of condition described in 8 C.F.R. § 244.2(f)(2), in this case after the decision of the BIA on March 17, 2004, in which to file an application for late registration; however, the TPS application was not filed until December 15, 2004. Therefore, the application will also be denied for this reason

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 dismissed.