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



ML

FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: AUG 27 2007

[WAC 05 038 51990]

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.

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 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 the applicant had been convicted of a felony committed in the United States.

On appeal, the applicant 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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of condition described in paragraph (f)(2) of this section.

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 indicates that on January 27, 1999, in the Superior Court of California, County of San Bernardino, Case No. [REDACTED] (arrest date January 25, 1999), the applicant was indicted for Count 1, assault with a deadly weapon not firearm or force: great bodily injury likely, 245(a)(1) PC, a misdemeanor; and Count 2, inflict corporal injury on spouse/cohabitant, 273.5(a) PC, a felony. On February 19, 1999, the applicant entered a plea of *nolo contendere* to Count 2, the court accepted the plea and found the applicant guilty of Count 2. She was placed on probation for a period of 36 months on the condition that she serve one day in the county jail, and pay \$310 in fines and costs. Count 1 was dismissed.

On appeal, the applicant explains that she was charged with a felony after she tried to defend herself from her live-in boyfriend, causing and inflicting corporal injuries to him. She asserts that on several occasions she had to call the police because he would turn violent and more than once he was arrested. She states that the incidents occurred in self-defense; therefore, she is requesting that her case be reviewed and approved for TPS.

The court record, however, clearly shows the applicant was convicted of the felony offense. Citizenship and Immigration Services (CIS) is required to rely on the court record as it stands, and cannot make determinations of guilt or innocence based on that record. Furthermore, CIS may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

Inflicting corporal injury upon a spouse, cohabitant, or parent of the perpetrator's child is a base and depraved act and is classified as a crime involving moral turpitude. *Grageda v. INS*, 12 F.3d 919 (9th Cir. 1993). See also *Matter of Phong Nguyen Tran*, 21 I&N Dec. 291 (BIA 1996). The infliction of bodily harm upon a person with whom one has such a familial relationship is an act of depravity that is contrary to accepted moral standards. The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on her felony conviction found to be a crime involving moral turpitude.

The applicant is ineligible for TPS due to her felony conviction, and because she 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.

Beyond the decision of the director, it is noted that the applicant filed her TPS application on November 22, 2004, after the initial registration period for El Salvadorans (from March 9, 2001 to September 9, 2002) had closed. Although the record indicates that the applicant filed Form I-589, Request for Asylum in the United States, on May 31, 1994, that application was denied by the Los Angeles Asylum Office on January 23, 1995, and was not pending during the initial registration period as required in 8 C.F.R. § 244.2(f)(2). Form I-221, Order to Show Cause, was issued also on January 23, 1995. The applicant has failed to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, the TPS application will also be denied for this reason.

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.