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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



OFFICE: VERMONT SERVICE CENTER

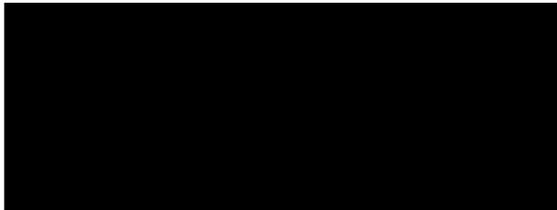
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IN RE:

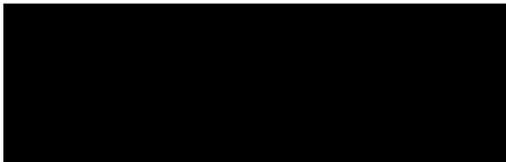
Applicant:



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.

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 the record showed that the applicant had been convicted of two misdemeanors.

On appeal, the applicant asserts his claim of eligibility for TPS.

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 31, 1993, the applicant was arrested by the Fairfax County, Virginia, Police Department, and charged with assault, striking and beating wife, without cause, a class 1 misdemeanor. The applicant was convicted of the crime as charged on May 12, 1993, and sentenced to 12 months in jail that was suspended, conditioned upon no further violations of the law.

- (2) On May 15, 1995, the applicant was arrested by the Herndon County, Virginia, Police Department, and charged with driving or operating a motor vehicle while under the influence of alcohol or other intoxicants, a class 1 misdemeanor. The applicant was convicted of the crime as charged on October 11, 1995, and sentenced to 12 months unsupervised probation, 12 months suspension of his Virginia driver's license, and a \$529.00 fine.

On appeal, the applicant states that pursuant to his criminal records request, he received documentation from the Commonwealth of Virginia, in which it was stated that as of 1985, the General District Court has been required to retain criminal misdemeanor convictions for 10 years, and at the conclusion of the respective time periods the records are destroyed. The applicant also states that pursuant to a criminal records request to the Commonwealth of Virginia, Juvenile and Domestic Relations District Court, it was indicated in their response that there was no record in the court under the applicant's name, and that "if the record ever existed in this court, it has been expunged according to Virginia law." The applicant continues by stating that he has only one misdemeanor conviction of record whereby, the assault charge has been expunged pursuant to Virginia law. The applicant concludes by stating that the service center's claim of multiple misdemeanor convictions is without proof, that the decision was in error, and that therefore, he is eligible for TPS.

The applicant submitted as evidence a Destruction Notice from the Commonwealth of Virginia, Fairfax County General District Court, dated June 30, 2006. The applicant also submitted a response to his criminal records request from the Commonwealth of Virginia, Juvenile and Domestic Relations District Court, dated July 5, 2006.

The applicant is ineligible for TPS due to his record of two misdemeanor convictions as detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Although the applicant claims that no criminal records were made available to him, and that his assault charge has been expunged pursuant to Virginia law, the record of proceedings contains notarized copies of the final criminal court dispositions as noted in numbers 1 and 2 above. The record shows that the Deputy Clerk of the Commonwealth of Virginia, General District Court, and the Deputy Clerk of the Commonwealth of Virginia, Juvenile and Domestic Relations District Court, signed the notarized documentation. The record also shows that the documents were submitted to the Immigration and Naturalization Service, U.S. Citizenship and Immigration Services Asylum Office, in response to their request for criminal dispositions made on or about August 29, 2005. The applicant has been convicted of two misdemeanor offenses. Consequently, the director's decision to deny the application for this reason will be affirmed.

The record of proceedings contains an affidavit written by the applicant's ex-wife and dated November 30, 2004, in which she states that she filed a domestic abuse complaint against the applicant; that the assault allegations that she made against him were not true; and that the charges brought against the applicant were false and without merit. The court record, however, clearly shows that the applicant was convicted of Nos. 1 and 2 above. 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). Therefore, the assertions contained in the affidavit carry no evidentiary weight in determining the applicant's eligibility for TPS.

Although the issue was not raised by the director, 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 (No. 1 above) involves moral turpitude. *Matter of Garcia*, 11 I&N Dec. 521 (BIA 1966). Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his misdemeanor convictions detailed above, and the application must also be denied for this reason.

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.