

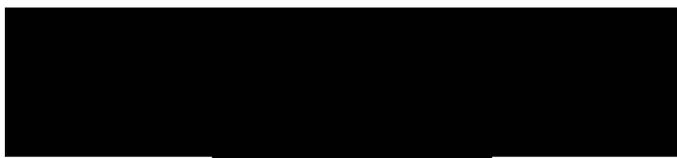
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE:

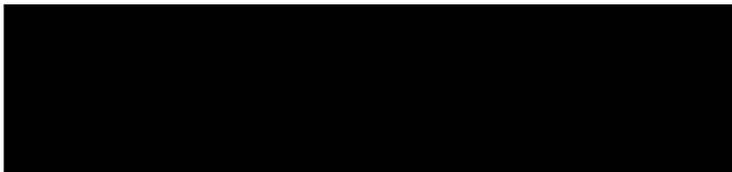
[WAC 01 184 55894]

OFFICE: CALIFORNIA SERVICE CENTER DATE:

APR 04 2008

INRE:

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DISCUSSION: Approval of the applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status on March 22, 2004. The director withdrew the applicant's Temporary Protected Status on February 27, 2006, when it was determined that the applicant had failed to provide the requested final court dispositions for all her past arrests.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

On appeal, the applicant states that she is eligible for TPS and submits copies of her final court dispositions.

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. Prostitution is an inadmissible offense. Section 212(a)(2)(D) of the Act.

The record reveals the following:

- On January 9, 1996, at the Municipal Court of Central Orange County Judicial District, Orange County, California, the applicant pled guilty to 647(b) PC Soliciting Prostitution, a misdemeanor (Case No. [REDACTED])

- The record of proceeding also shows that the applicant was arrested on May 19, 1992, in Orange County, California, and charged with two counts of PC Prostitution (Case **NO** - __). The record shows that these charges were dismissed by the Municipal Court of Central Orange County on June 8, 2001.

8 C.F.R. § 244.3(b) describes the waiver of grounds of inadmissibility as:

Except as provided in paragraph (c) of this section, the Service may waive any other provision of section 212(a) of the Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is inadmissible on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of inadmissibility on Form 1-601 (Application for waiver of grounds of excludability).

The applicant has been convicted of a crime involving moral turpitude. As noted above, the applicant has been convicted of prostitution. Except as provided under petty offense exception under Section 212(a)(2)(A)(ii)(II) of the Act, a person who has engaged in prostitution within ten years of their TPS application is inadmissible. Section 212(a)(2)(D) of the Act.

It is noted that the applicant indicated in her 1-821 applications dated May 7, 2001, and April 5, 2005, Part 4, section 2(f) that she had not been convicted of prostitution. However, as noted above, the record reveals a conviction for prostitution. The applicant has failed to submit any objective evidence to explain or justify the false statements on her 1-821 applications. The applicant, is therefore, inadmissible under Section 212(a)(6)(C) of the Act.

As discussed above, the applicant is inadmissible under both Section 212(a)(2)(D) of the Act, and under Section 212(a)(6)(C) of the Act. However, the regulations provides that these grounds of inadmissibility may be waived. Pursuant to 8 C.F.R. § 244.3(b), Citizenship and Immigration Services (CIS) may waive inadmissibility under the provisions of Section 212(a) of the Act in case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is inadmissible on grounds that may be waived, he or she may file for a waiver of grounds of inadmissibility on Form 1-601, Application for Waiver of Grounds of Inadmissibility.

Accordingly, the director's decision will be withdrawn and the matter will be remanded so that the director may accord the applicant an opportunity to file an application for waiver. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

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 director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.