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U.S. Citizenship
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Services

MI

FILE: [REDACTED]
[EAC 02 076 52476]

OFFICE: VERMONT SERVICE CENTER

DATE: FEB 01 2008

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, withdrew the applicant's Temporary Protected Status (TPS). The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a native and citizen of El Salvador who is seeking TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew the applicant's TPS because the applicant had been convicted of a felony committed in the United States. The director may withdraw the status of an alien granted TPS 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.P.R. § 244.14(a)(1).

On appeal, counsel asserts that the applicant has not been convicted of an offense as no fine was imposed, the case was continued without a finding, and the court set no other terms or conditions.

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).

The regulation at 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.

The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The record reveals that on March 19, 2003, the applicant appeared in the Chelsea Massachusetts District Court charged with violating chapter 265, section 15A(b) of the Massachusetts General Laws, assault and battery with a dangerous weapon (a shod foot). Assault and battery with a dangerous weapon is punishable by imprisonment in the state prison for not more than 10 years, or in a house of correction for not more than 2½ years, or a fine of not more than \$5,000, or both imprisonment and a fine.

At trial, the applicant admitted to sufficient facts to find him guilty of the offense; however, the court continued the case for six months without entering a finding of guilt. The applicant was ordered to pay a victim/witness assessment fee of \$90. The applicant was not placed under any court-ordered supervision.

Section 8 of chapter 258B of the Massachusetts General Laws provides, "The court shall impose an assessment of no less than \$90 against any person who has attained the age of seventeen years and who is convicted of a felony or against whom a finding of sufficient facts for a conviction is made on a complaint charging a felony."

On appeal, counsel asserts that the victim/witness assessment fee is mandatory and is not a **fine** because it is not punitive. Counsel's argument, however, is without merit. The applicant would not have had to pay a victim/witness assessment fee had he not **committed** the crime; therefore, for immigration purposes, the imposition of the fee is a form of punishment and an infringement on liberty sufficient to consider this to be a conviction for immigration purposes.

The applicant is ineligible for TPS due to his record of at least one felony conviction, as discussed above. Section 244(c)(2)(B)(i) of the Act and 8C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be **affirmed**.

We note that, according to the applicant's undated Form G-28, Notice of Entry of Appearance as Attorney or Representative, the applicant resides at the Plymouth County House of Correction. The record does not reflect whether the assault and battery case against the applicant was dismissed following the six months continuance, and does not reflect the reason for his residence at the Plymouth County House of Correction.

Beyond the decision of the director, the applicant has also been convicted of a crime involving moral turpitude.

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 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. DeGeorge*, 341 U.S. 223, *reh'g denied*, 341 U.S. 956 (1951).

Assault and battery with a deadly weapon is a crime involving moral turpitude. *Matter of Goodalle*, 12 I&N Dec. 106 (BrA 1967); *Matter of Baker*, 15 I&N Dec. 50 (BrA 1974); *Matter of Ptsai*, 12 I&N 790 (BIA 1968). Section 212(a)(2)(A)(ii) of the Act provides for an exception to excludability of an alien convicted of only one crime of moral turpitude, where the maximum penalty possible for the crime did not exceed imprisonment for one year and the alien was not sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was ultimately executed). In this case, the applicant was not sentenced to imprisonment. However, pursuant to Massachusetts General Law chapter 265, section 15A(b), assault and battery with a dangerous weapon is punishable by confinement in the state prison for 10 years or in a house of correction for not more than 2½ years. Therefore, the applicant does not **qualify** under this exception.

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.

ORDER: The appeal is dismissed.