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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: NOV 01 2010

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:

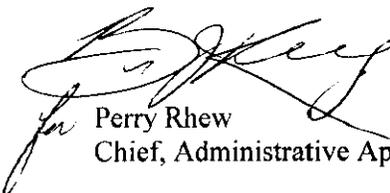
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010, must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras 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 withdrew TPS because the applicant had been convicted of a felony in the United States, and the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

On appeal, counsel asserts, "the convictions entered were contrary to [REDACTED] as applicant was not advised of the immigration consequences of his guilty pleas." Counsel asserts that the convictions should not be used against the applicant as "TPS for El Salvador was not in existence in 1997."

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.F.R. § 244.14(a)(1).

An alien shall not be eligible for TPS 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).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

"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. 8 C.F.R. § 244.1.

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 reflects that on September 30, 1997, the applicant was arrested by the Sheriff's Office in Fannin County, Georgia for false statements or writings; conceal facts or fraudulent documents in matters of government, a violation of Georgia Code section 16-10-20, and forgery

in the first degree, a violation of Georgia Code section 16-9-1, both felonies. On October 9, 1997, the applicant was convicted of both violations. The applicant was placed on probation for five years and ordered to pay a fine. [REDACTED]

On appeal, counsel asserts that the convictions should be not used against the applicant as "TPS for El Salvador was not in existence in 1997." Counsel's assertion, however is without merit. First, the applicant is not from El Salvador; the applicant claimed on his TPS application to be a native and citizen of Honduras. Second, section 244(c)(2)(B)(i) of the Act provides that an applicant is ineligible for TPS if he has been convicted of a felony or three misdemeanors in the United States. A time limitation is not provided for criminal activities for applicants for TPS under the Act, and as provided in 8 C.F.R. § 244.4(a). The applicant must meet the eligibility requirements at the time the application is filed, as well as at the time the application is adjudicated.

In the instant case, counsel has not provided any credible evidence to support his assertion that the applicant had not been advised of the possible immigration consequences of a guilty plea by either his counsel or the trial court. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO concludes that the felony convictions continue to effect immigration consequences.

The applicant is ineligible for TPS due to his felony convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no waiver available, even for humanitarian reasons, of the requirements stated above.

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 forgery involves moral turpitude. *Matter of Seda*, 17 I. & N. Dec. 550 (BIA 1980). Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to this felony conviction.

Consequently, the director's decision to withdraw TPS on these grounds will be affirmed.

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 TPS 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.