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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

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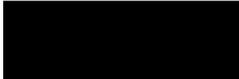


**U.S. Citizenship
and Immigration
Services**



M,

DATE: **SEP 07 2011** Office: VERMONT SERVICE CENTER

FILE: 

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:

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, with a fee of \$630. 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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 it was determined that the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his conviction of indecent assault and battery on a person over 14 years of age.

On appeal, counsel asserts that although the applicant was tried and convicted of violating Massachusetts General Law 265, section 13H, the court only sentenced him to six months suspended sentence. Counsel asserts that the applicant's 2004 conviction does not meet the requirements of a crime of violence, a particular serious crime or an aggravated felony.

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC § 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record contains court documentation from the Massachusetts District Court of Southern Essex, which reflects that on February 20, 2004, the applicant pled guilty to violating M.G.L. 265, section 13H, indecent assault and battery on a person over 14 years of age. The applicant's sentence of six months was suspended and he was ordered to register as a sex offender. On December 31, 2004, the applicant's probation was terminated.

Although the director, in his decision dated April 19, 2011, cited the statutes regarding the conviction of an aggravated felony (section 208(b)(2)(B)(i) of the Act), particular serious crime (section 208(b)(2)(A)(ii) of the Act) and a crime of violence (section 101(a)(43)(F) of the Act), the sole basis for the withdrawal of the applicant's TPS was the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. The director, concluded, "[t]he crime of Indecent Assault and Battery on a Person over 14 years old for which you were convicted, renders you ineligible for TPS pursuant to sections 244(c)(2)(A)(iii)(I) of the Act, and Title 8 CFR Part 244.3."

Whoever commits an indecent assault and battery on a person who has attained age fourteen shall be punished by imprisonment in the state prison for not more than five years, or by imprisonment for not more than two and one-half years in a jail or house of correction. *See* M.G.L. 265 section 13H.

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). Indecent assault and battery is a crime involving moral turpitude., *Maghsoudi v. INS*, 181 F.3d 8 (1st Cir. 1999). Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his conviction. Consequently, the director's decision to withdraw TPS will be affirmed.

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.