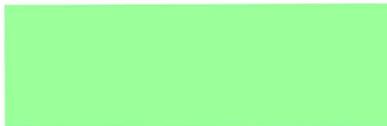




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 20 2013

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was granted 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's misdemeanor conviction of sexual abuse constitutes sexual abuse of a minor and therefore an aggravated felony under section 101(a)(43)(A) of the Act. The director also determined that the applicant was inadmissible under section 212(a)(2)(A)(i) of the Act.

On appeal, counsel asserts that the offense of sexual abuse is a misdemeanor, not a felony, for the purpose of section 244(c)(2)(B) of the Act. Counsel states that the applicant's conviction falls under the petty offense exception. Counsel indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.¹ However, more than a year later, no additional correspondence has been presented by counsel. Therefore, the record must be considered complete.

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).

"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.

"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.

¹ Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

Section 101(a)(43) of the Act defines aggravated felonies for purposes of determining classes of deportable aliens under section 237(a)(2)(A)(iii) of the Act. A conviction for “murder, rape, or sexual abuse of a minor” constitutes an aggravated felony under section 101(a)(43)(A) of the Act.

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. 8 U.S.C. § 1182(a)(2)(A)(i).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record contains the complaint and the disposition in Case no. [REDACTED] from the Superior Court of the District of Columbia, which indicates that the applicant was charged with first degree child sexual abuse, in violation of 22 D.C. Code, § 3008. On [REDACTED] 2011, the applicant pled guilty to misdemeanor sexual abuse, in violation of D.C. Code § 22-3006. The applicant was sentenced to serve 180 days (all but 120 days were suspended), placed on supervised probation for 18 months and ordered to pay court cost.

The applicant's conviction constitutes sexual abuse of a minor and is therefore an aggravated felony under section 101(a)(43)(A) of the Act. *Matter of Small*, 23 I&N Dec. 448 (BIA 2002) (finding that sexual abuse in the second degree, in violation of New York PL 130.60(2), a Class A misdemeanor under state law, constitutes an aggravated felony under section 101(a)(43)(A)). Accordingly, the director's decision to withdraw TPS on this ground will be affirmed.

Misdemeanor sexual abuse is defined as a person engaged in either a sexual act or sexual contact with another person when the offender should have known that he or she did not have the other person's permission.

“Sexual contact” is defined as the touching with any clothed or unclothed body part or any object, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person. D.C. Code § 22-3001(9).

Sexual abuse is a specific intent crime that involves the touching of an intimate part of another person, against the person's will, committed for the purpose of sexual arousal or gratification, or to abuse, humiliate, harass, or degrade. Viewed against the holdings in *Matter of S-*, 5 I&N Dec. 686 (BIA 1954) and *Matter of Z-*, 7 I&N Dec. 253, 255 (BIA 1956), wherein indecent assault was held to involve moral turpitude; and in light of *Perez-Contreras*, wherein the BIA found that moral turpitude refers to conduct that is depraved and contrary to the rules of morality and is present when knowing or intentional conduct is an element of a crime, the AAO finds that misdemeanor sexual abuse under D.C. Code § 22-3006 is a crime of depravity that involves moral turpitude. Consequently, the director's decision to withdraw TPS on this ground will also 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.

Finally, the record reflects that a removal hearing was held on May 10, 2012, and the applicant was ordered removed from the United States. The Form I-205, Warrant of Removal/Deportation, indicates that the applicant was removed on May 10, 2012.

ORDER: The appeal is dismissed.