



U.S. Citizenship  
and Immigration  
Services

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**JUN 18 2015**

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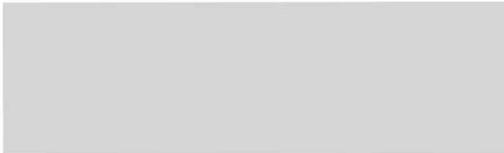
FILE:

APPLICATION RECEIPT #:

IN RE: Applicant:

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center, withdrew the applicant's Temporary Protected Status. 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 Honduras who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a. On October 25, 2013, the director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States and found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of committing crimes involving moral turpitude.

On appeal, counsel requests that the applicant's TPS be reinstated as the applicant pleaded nolo contendere to the charges, which were neither proven nor tried by a jury. Counsel further asserts that the offenses did not result in felony convictions; that the convictions were not aggravated in nature and that the applicant did not serve more than five days in jail. Counsel resubmits the court dispositions for each conviction.

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. 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. 8 C.F.R. § 244.1. 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. *Id.*

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, 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 contains the following information relating to the applicant's criminal history:

1. An arrest on [REDACTED] 2012, by the Sheriff's Office, [REDACTED] California for burglary and theft. On [REDACTED] 2012, in the Superior Court for [REDACTED] California, the applicant waived the right to a trial by jury. The applicant entered a

plea of nolo contendere to violating section 484(a) PC, petty theft, a misdemeanor. The court accepted the plea and the applicant was sentenced to serve five days in the county jail, ordered to pay a fine and court costs and was placed on probation for 36 months. The remaining offense was dismissed.

2. An arrest on [REDACTED] 2009, by the Sheriff's Office, [REDACTED] California for one count of shoplifting. On [REDACTED] 2009, in the Superior Court for [REDACTED] California, the applicant waived the right to a trial by jury. The applicant entered a plea of nolo contendere to violating section 484(a) PC, petty theft, a misdemeanor. The court accepted the plea and the applicant was sentenced to one day in the county jail, ordered to pay a fine and court costs and was placed on probation for 36 months.

California Penal Code § 290 PC provides that a petty theft conviction is punishable by fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six months, or both.

Counsel's brief on appeal has been considered. However, a nolo contendere plea resulting in some form of punishment is a conviction for immigration purposes. Section 101(a)(48)(A) of the Act.

Though the applicant was sentenced to no more than five days in jail, each offense qualifies as a "misdemeanor" for immigration purposes. The regulation states that a misdemeanor is a crime "punishable by imprisonment for . . . one year or less, regardless of the term . . . actually served." Likewise, the regulation states that a criminal violation will not be considered a misdemeanor only if it is "punishable by imprisonment for a maximum term of five days or less." As such, a misdemeanor is defined under the regulation by the maximum imprisonment possible for the crime under California law, not the specific prison term meted out by the judge in a particular case. In this case, the applicant was convicted of an offense punishable by up to 180 days incarceration, which meets the definition of a misdemeanor for immigration purposes. Therefore, each conviction qualifies as a "misdemeanor" as defined for immigration purposes in 8 C.F.R. § 244.1.

The applicant remains ineligible for TPS due to her two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The applicant is also inadmissible based on her convictions of crimes involving moral turpitude.

Section 212(a)(2) of the Act states, in pertinent part:

Criminal and related grounds. –

(A) Conviction of certain crimes. –

- (i) In general. – Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
  - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
- (ii) Exception. – Clause (i)(I) shall not apply to an alien who committed only one crime if-
  - (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or
  - (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

California Penal Code § 484(a) PC provides, in pertinent part:

Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft. . . .

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 BIA has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person's property. *See Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973) ("Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended."). The Ninth Circuit Court of Appeals in *Castillo-Cruz v. Holder* determined that petty theft under California Penal Code § 484(a) requires the specific intent to deprive the victim of his or her property permanently, and is therefore a crime categorically involving moral turpitude. 581 F.3d 1154, 1160 (9th Cir. 2009). In *Matter of Pedroza*, the BIA determined that misdemeanor petty theft under section 484 of the California Penal Code constitutes a crime involving moral turpitude. 25 I&N Dec. 312, 315-16 (BIA 2012).

The applicant does not contest her inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on appeal. Accordingly, we will not disturb the director's finding that the applicant is inadmissible to the United States for having been convicted of crimes involving moral turpitude.

There is no waiver available to an alien found inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Section 244(c)(2)(A)(iii) of the Act, 8 C.F.R. § 244.3(c)(1), for convictions of crimes involving moral turpitude, or under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a), for two misdemeanor convictions. Consequently, the director's decision to withdraw TPS on these grounds will be affirmed.

The appeal is dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.