



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-C-

DATE: SEPT. 1, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS

The Applicant, a native and citizen of El Salvador, was granted temporary protected status. *See* Section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a. The Director, Vermont Service Center, withdrew the Applicant's temporary protected status and denied the application for re-registration. The matter is now before us on appeal. The appeal will be dismissed.

On September 30, 2014, the Director found the Applicant to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of fraud in El Salvador.

On appeal, the Applicant contends that the inadmissibility ground was incorrectly applied in his case. The Applicant asserts that he is eligible for the benefit sought, as his conviction for fraud in El Salvador is not a particularly serious crime that would except him from a benefit under section 208(b)(2)(A) of the Act. The applicant also asserts that section 244(c)(2)(A)(iii) of the Act and 8 C.F.R. § 244.3(c) were misapplied to his temporary protected status application. The Applicant notes that his fraud conviction is a non-violent crime carrying a sentence of three years, which occurred over fourteen years ago. The applicant contends that he does not pose a danger to the community or security of the United States.

The Director may withdraw the status of an alien granted temporary protected status 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).

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).

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 reflects that on March 8, 2000, the Applicant was convicted of fraud in violation of article 232 of El Salvador Penal Code. The Applicant was sentenced to serve three years in prison.

Article 232 of El Salvador Penal Code provides:

Whoever secures for himself or for another an unfair advantage to the detriment of others, by ruse or other means of deceit or abuse of good faith, shall be punished with imprisonment of one to five years if fraud exceeds [the value of] twenty colones.

To determine the penalty, the judge will consider the extent of the damage, the skill or cunning with which the agent has acted, and whether the damage was suffered by a person who because of his lack of culture or education is easily deceived.

Any crime involving fraud is a crime involving moral turpitude. *Burr v. INS*, 350 F.2d 87, 91 (9th Cir. 1965), cert. denied, 383 U.S. 915 (1966). Accordingly, the applicant's fraud conviction constitutes a crime involving moral turpitude. It is noted that the Applicant's conviction does not fall within the petty offense exception, as the maximum penalty possible for the crime of conviction is five years and the Applicant was sentenced to more than six months imprisonment. *See* Section 212(a)(2)(A)(i)(I)(ii)(II) of the Act.

The Applicant asserts that section 208(b)(2)(A) of the Act should apply in analyzing his criminal conviction. However, section 208(b)(2)(A) of the Act pertains to exceptions to eligibility for a grant of asylum, which is not the issue currently before us. As the applicant is seeking temporary protected status, both section 244(c)(2)(A)(iii) of the Act and 8 C.F.R. § 244.3(c) are applicable, as both sections relate to eligibility for this status.

The Applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on his fraud conviction in El Salvador. There is no waiver available for inadmissibility under this section of the Act. *See* Section 244(c)(2)(A)(iii)(I) of the Act.

Consequently, the Director's decision to withdraw the Applicant's temporary protected status and denied the application for re-registration on this ground will be affirmed.

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.

Cite as *Matter of M-C-*, ID# 12816 (AAO Sept. 1, 2015)