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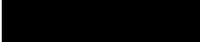
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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

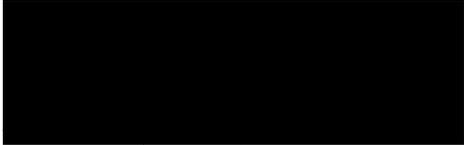


MI

FILE: 
WAC 02 070 50647

Office: California Service Center

Date: **JUL 18 2003**

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: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a.

The director determined that the applicant is ineligible for TPS because he had been convicted of a felony or two or more misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant contends that the TPS application was wrongly denied because the Service did not give him a chance to obtain his police record or court record. He requests an extension of 60 days in which to obtain additional records to establish that he did not inflict corporal injury to his spouse. However, it has been approximately seven months since the appeal was filed and no additional evidence has been received.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:

(i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;

(ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

Felony means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except 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 such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

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 felony or misdemeanor.

Section 212(a)(2) of the Act, 8 U.S.C. § 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

(A)(i) 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....

The Federal Bureau of Investigation (FBI) report, contained in the record of proceeding, reflects the following arrests and/or convictions pertaining to the applicant, under the name of [REDACTED]

1. Arrested on January 12, 1992, in Los Angeles, California, for spouse beating. He was subsequently indicted for (1) battery on noncohabitant/former spouse, (2) false imprisonment, and (3) inflict corporal injury on spouse. The FBI report shows that the applicant was convicted of Count (3), he was sentenced to 2 days in jail, and placed on probation for a period of 24 months. Counts (1) and (2) were dismissed. The arrest report and court disposition of this arrest, however, is not contained in the record of proceeding.

2. Arrested on October 9, 1993, in Los Angeles, California, and charged with assault with a deadly weapon, no firearms/great bodily injury. The arrest report and court disposition of this arrest is not contained in the record of proceeding.

3. Arrested on January 20, 2002, in Los Angeles, California, and charged with (1) inflict corporal injury on spouse/cohabitant, and (2) failure to appear. The arrest report and court disposition of this arrest is not contained in the record of proceeding.

The applicant, on appeal, contends that he was not given a chance to obtain his police record or court record; therefore, the Service violated the due process protection required by the United States Constitution. The record of proceeding contains the FBI report reflecting the applicant's arrests and/or convictions listed above. The applicant was, therefore, requested on March 7, 2002, and again in a notice of intent to deny dated July 19, 2002, to submit the arrest reports and a certified final court disposition of each arrest. The applicant, in response, submitted a letter from the Los Angeles Superior Court reflecting that the indexes of the court was examined "by name only," and found no record. He also submitted a letter from the [REDACTED]

[REDACTED] indicating that the records requested may exist under another spelling or name, but that based on the information

provided, no such record(s) exist in their files. It is noted in the FBI report that the applicant was arrested under the name of [REDACTED] and that his case was heard in the [REDACTED] rather than the Superior Court. Furthermore, the applicant failed to submit the arrest reports, as had been requested.

The applicant was accorded the opportunity to submit the arrest and court records on March 7, 2002, and on July 19, 2002. Further, while the applicant, on appeal, requested an extension of 60 days in which to submit additional documents, it has been approximately seven months since the appeal was filed and no additional documentation has been received. Therefore, no violation of the due process rights of the applicant can be found.

Assault and battery with a deadly weapon is a crime involving moral turpitude. Likewise, spousal/domestic abuse and willful infliction of an injury upon a spouse/cohabitant are crimes involving moral turpitude. Convictions of these crimes may render the applicant inadmissible to the United States, pursuant to section 212(a)(2)(i)(I) of the Act. Furthermore, convictions of these crimes may render the applicant ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on a felony or two or more misdemeanor convictions. The applicant, however, failed to submit the arrest reports and the court's final dispositions of these arrests.

The burden of proof is upon the applicant to establish that he 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.