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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

U.S. AAO, 20 Mass, 3/F

425 I Street, N. W.

Washington, DC 20536



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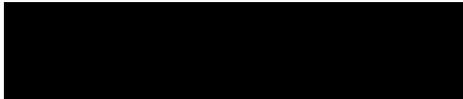


Office: California Service Center Date:

NOV 07 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 Citizenship and Immigration Services (CIS) 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 M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The application 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 indicated on his application that he entered the United States in January 1990 without a lawful admission or parole. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because he found the applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction.

On appeal, the applicant admitted his past crimes, but stated that he had changed his life and had not committed any offenses since 1989.

An alien shall not be eligible for temporary protected status under this section if the Attorney General 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.

"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. 8 C.F.R. § 244.1.

"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.

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.

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible. Section 212(a)(6)(C) of the Act.

The record reveals the following offenses in Los Angeles, California:

1. On November 5, 1986, the applicant was arrested for grand theft auto. (Docket #31388519). It appears from the FBI "rap sheet" that the applicant was subsequently convicted of a reduced charge of taking a vehicle without the owner's consent in violation of section 10851(a) VC, a misdemeanor. However, the actual court disposition for this offense was not provided.
2. On November 5, 1986, the applicant was arrested for reckless driving in violation of section 23103 VC. (Docket #31388519). The final court disposition for this offense is not known.
3. On November 5, 1986, the applicant was arrested for unlicensed driving in violation of section 12500(a) VC. (Docket #31388519). The final court disposition for this offense is not known.
4. On November 4, 1987, the applicant was arrested for petty theft in violation of section 484(A) PC. It appears from the FBI "rap sheet" that the applicant was subsequently convicted of this misdemeanor. However, the actual court disposition for this offense was not provided.
5. On February 24, 1989, the applicant was arrested for transportation or sale of a narcotic controlled substance (cocaine) in violation of section 11352 H&S. (Docket #A984252). On March 10, 1989, the applicant was convicted of this felony in the Superior Court of California, County of Los Angeles, and was placed on probation for a period of 36 months.

The applicant, on appeal, stated that he "made a mistake when [he] was 20." However, the applicant did not suggest that he was charged or convicted as a juvenile; rather, the record confirms that the applicant was convicted of the offense in No. 5 above in an adult court, the Superior Court, County of Los Angeles.

The applicant is ineligible for temporary protected status due to his record of at least one felony conviction, detailed in No. 5 above. 8 C.F.R. § 244.4(a). In addition, the applicant is inadmissible under section 212(a)(2)(A)(I)(II) of the Act due to his drug-related conviction detailed in No. 5 above. Finally, the record reveals that the applicant fraudulently indicated on Part 4, Line 2, of his application for TPS that he had not been convicted of a felony and that he had not been convicted of any law relating to a controlled substance. This misrepresentation of material facts in an application for immigration benefits also renders the applicant inadmissible under section 212(a)(6)(C) of the Act.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. The applicant's statement, on appeal, does not overcome the adverse evidence in the record. Consequently, the director's decision to deny the application for



temporary protected status will be affirmed.

An alien applying for temporary protected status 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.