

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

M

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

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

[Redacted]

FILE: [Redacted]
WAC 02 162 52857

Office: California Service Center

Date: APR 07 2004

IN RE: Applicant:

[Redacted]

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

IN BEHALF OF APPLICANT:

[Redacted]

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 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 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 (AAO) 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 two felony offenses committed in the United States. The director, therefore, denied the application.

On appeal, counsel asserts that the denial of the applicant's TPS application due to his "convictions" was in error because the proceedings were held in juvenile court, and at the time of the proceedings, the applicant was a 15-year-old juvenile. Counsel states that the Board of Immigration Appeals, in *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000), reaffirmed the longstanding rule that a juvenile delinquency disposition is not a conviction for immigration purposes, and that the Board held that the enactment of the IIRAIRA "definition of conviction" in section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), did not change this result.

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.

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 record reflects that on December 3, 1992, in the Superior Court of California, County of Los Angeles, Juvenile Court, Case No. FJ06449, the applicant was charged with Count 1, murder in the 2nd degree/use of firearm (handgun), in violation of sections 187(a) PC and 12022.5(a) PC; and Count 2, attempted murder/use of firearm (handgun), in violation of sections 664/187(a) and 12022.5(a) PC. On October 6, 1993, the applicant was found to be a minor and was declared a ward of the court. He was committed to the California Youth Authority for a period of 15 years to life.

The applicant was 16 years of age when he was tried in Juvenile Court for the charges listed above. The Board, in *Matter of*

Ramirez-Rivero, 18 I&N Dec. 135 (BIA 1981), held that acts of juvenile delinquency¹ are not crimes in the United States and that an adjudication of delinquency is not a conviction for a crime within the meaning of the Immigration and Nationality Act. The Board further held that since an act of juvenile delinquency is not a crime for the purposes of immigration laws, then such conduct can not serve as the basis of a finding of inadmissibility. See also *Matter of De La Nues*, 18 I&N Dec. 140 (1981); *Matter of Devison*, *supra*.

Accordingly, the applicant's juvenile record does not render him ineligible for TPS under either 8 C.F.R. § 244.3 (conviction of crimes involving moral turpitude) or 8 C.F.R. § 244.4 (felony convictions).

However, the intentional killing of a human being and the maiming of another, merely because of their manner of dress and/or lifestyle will not be ignored in this proceeding, regardless of the age of the perpetrator at the time he committed the crimes, or the resultant sentence imposed by the State of California.

The court's indictment record in this case shows that the applicant, on November 22, 1992, did willfully, unlawfully and with malice aforethought, murder a human being, thereby violating section 187(a) PC; and did willfully, unlawfully and with malice aforethought, attempt to murder another human being, thereby violating sections 644/187(a) PC. The probation/police report reflects that the applicant was arrested on December 2, 1992, after he was identified by witnesses as the one who had shot two males dressed in women's clothing. The report further reflects that the applicant had gone to a friend's home and borrowed a gun, and returned to the scene and shot both victims, fatally wounding one. He was sentenced to incarceration for a period of 15 years to life.

The TPS application shows that the applicant claimed to have entered the United States without inspection near San Ysidro, California, in 1989. The record reflects that prior to his

¹ Juvenile delinquency is defined by the Federal Juvenile Delinquency Act, 18 U.S.C. 5031, as "the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult."

arrest, the applicant was residing with his brother in Los Angeles, California. At the early age of 14, he started associating with street gangs and was involved in gang activity and crime. The gang, of which he claimed to be an associate member, is identified as being involved in many serious criminal/delinquent behaviors, especially drive-by shootings, drug sales, car thefts, burglaries, and other crimes. The record reflects that the applicant had several arrests in Los Angeles, at the age of 15 years: On June 25, 1992 for trespassing and vandalism; on June 30, 1992 for burglarizing a vehicle; on July 7, 1992 for robbery/armed with a deadly weapon; and on October 19, 1993 for presenting false identity to a police officer, and vandalism.

On November 22, 1992, at age 15,² the applicant committed the murder and other acts, and was incarcerated in the California Juvenile Hall to complete his 15-year sentence. On January 28, 2002, the applicant was released from a Youth Authority Institution and placed on parole supervision. Upon expiration of the court's jurisdiction on his 25th birthday, the applicant was discharged from parole supervision on September 3, 2002.

The applicant's ties to the United States have been with his brother and a married sister, who were unable to provide the necessary parental role to aid the applicant in establishing a life in the United States prior to his entry into the California penal system. Any equities that could be declared by counsel or the applicant are insufficient to outweigh the seriousness of the crimes committed.

Section 244(a) of the Act, 8 U.S.C. § 1254, states that the Attorney General [now, the Secretary, Homeland Security], "may grant" temporary protected status to an alien who otherwise meets the requirements of the statute. The Secretary is given the discretion to not grant temporary protected status in certain

² The record of proceeding does not contain the applicant's birth certificate. The records of the Juvenile Court show that the applicant was born on September 3, 1977, and was 15 years of age when he committed the crime of murder. The application for TPS and the application for employment authorization, however, both show that the applicant was born on August 25, 1976; he would have been 16 years old when the crime was committed.



instances. Here, given the heinous and reprehensible acts committed by the applicant, the Secretary has chosen to exercise his discretion. The application will be denied as a matter of discretion.

ORDER: The appeal is dismissed.