



U.S. Citizenship
and Immigration
Services

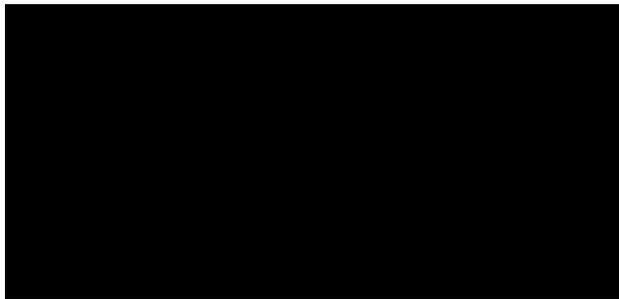
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: AUG 23 2005
[WAC 01 243 57388]

IN RE: Applicant:



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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 of the Administrative Appeals Office 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again by the Director, California Service Center. 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 El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director initially denied the application on January 13, 2004, after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

The record shows that the applicant did respond to the director's request for additional evidence on November 12, 2003.

The director subsequently reopened the matter and denied the application again on February 25, 2004, because he found the applicant had been convicted of two misdemeanors.

On appeal, the applicant states that, despite his past mistakes, he has been given an opportunity to rebuild his life, and he has been a law-abiding member of society.

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

- (a) Is a national of a 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 Temporary Protected Status 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.

An alien shall not be eligible for temporary protected status 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. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

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 misdemeanor.

The Federal Bureau of Investigation (FBI) fingerprint results, contained in the record of proceeding, reflect the following:

1. On June 14, 2000, the applicant was arrested by Sheriff's officers in San Rafael, California, under the name [REDACTED] and charged with one count of false imprisonment by violence in violation of section 236 PC, a felony; one count of attempting a lewd act upon a child in violation of section 664/288(c)(1) PC, a felony; and, one count of child molesting in violation of section 647.6 PC, a misdemeanor. On June 15, 2000, Superior Court Criminal, County of Marin, orally amended the charge on the motion of the District Attorney to include Count 4, having unlawful sexual intercourse with a child under 16 years of age in violation of section 664/261.5(d), a misdemeanor. Counts 1, 2, and 3 were

dismissed in the furtherance of justice, and the applicant pled guilty to count 4. (Case Number [REDACTED] Docket Number [REDACTED])

2. On July 5, 2002, the applicant was arrested by Sheriff's officers in San Rafael, California, under the name [REDACTED] and charged with one count of driving under the influence of alcohol with prior conviction(s) in violation of section 23152(a) VC, a misdemeanor, and one count of driving under the influence of alcohol with a blood alcohol of 0.08% or higher in violation of section 23152(b) VC, a misdemeanor. The applicant has not provided the final court disposition of these charges.
3. On September 20, 2002, the applicant was arrested by Sheriff's officers in San Rafael, California under the name [REDACTED] and charged with one count of court remand of driving under the influence of alcohol with a blood alcohol content of 0.08% or higher. (Agency Case Number [REDACTED])

The applicant has provided the final court disposition of the charges detailed in No. (1) above. This disposition establishes that the applicant has been convicted of one misdemeanor. However, the applicant has failed, in response to the Notice of Intent to Deny and again on appeal, to provide the final court dispositions for the applicant's arrests detailed in Nos. (2) and (3) above. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

It is noted for the record that the applicant was apprehended by the United States Border Patrol on July 7, 1997, near Brownsville, Texas. He told the apprehending officers his name was [REDACTED]. The applicant was issued a charging document and released on his own recognizance. On October 22, 1997, an Immigration Judge in Harlingen, Texas, ordered the applicant deported in absentia. The District Director, Harlingen, issued a Form I-206, Warrant of Deportation, against [REDACTED] on December 29, 1997. To date, the warrant remains outstanding.

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.