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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 0 9 2005
[WAC 01 173 52169]

IN RE: Applicant: [redacted]

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, 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 indicated on his application that he entered the United States on April 18, 1997, 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 that the applicant had failed to submit requested evidence relating to his criminal record.

On appeal, the applicant submits additional evidence.

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 a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. De George*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951).

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.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) 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 offense in a Federal Bureau of Investigations (FBI) report:

> On July 7, 2001, the applicant was arrested by the Sheriff's Office, Fresno, California, under the name nd charged with one count of "DUI, ALCOHOL/DRUGS."

Pursuant to a letter dated February 3, 2004, the applicant was requested to submit the final court disposition for the charge detailed above. He was also requested to submit additional evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. In response, the applicant provided evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time frames. He did not provide a copy of the final court disposition of his criminal charge as requested.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of his application and denied the application on March 15, 2004.

On appeal, the applicant provides a letter dated March 22, 2004, from the Police Department, City of Fresno, Fresno, California, indicating that no criminal record was found for at that police department. However, the applicant's criminal record was discovered through an FBI fingerprint search. It is the position of Citizenship and Immigration Services (CIS) that an FBI fingerprint search provides a more thorough account of an applicant's criminal background than local record searches conducted by name only. It is noted that, according to the FBI report, the applicant was arrested under the name Since the Fresno Police Department criminal record search was conducted using the name it is not surprising that a record was not found. Moreover, the FBI printout indicated that the applicant was arrested by the Fresno Sheriff's Office, not by the Fresno Police Department.

Despite the director's specific request for evidence from the court and "not the police station," the applicant has submitted a police clearance letter rather than the requested final court disposition of his criminal charge. The applicant has failed to provide any evidence revealing the final court disposition of his arrest detailed 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 that the applicant was apprehended by the United States Border Patrol near El Centro, California, on April 19, 1994. He was issued a Notice to Appear for a removal hearing before an Immigration Judge and released on his own recognizance under CIS record There is no indication in the record that a removal hearing was ever held.

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.

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ORDER: The appeal is dismissed.