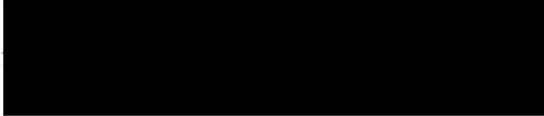


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U.S. Citizenship
and Immigration
Services

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FEB 18 2005

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE:
[WAC 02 275 51498]

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:
[REDACTED]

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 by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The director's decision will be withdrawn, and the appeal will be sustained.

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 denied the application because he found that the applicant had failed to submit requested court documentation relating to her criminal record.

On appeal, counsel submits a statement and additional evidence.

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 record reveals that on March 12, 1994, in Los Angeles, California, the applicant was arrested for burglary, in violation of 459 PC, a felony.

On June 12, 2003, the applicant was requested to submit the final court disposition of her arrest. In response, the applicant furnished two letters from the Superior Court of California, County of Los Angeles, dated May 30, 2002, and June 18, 2003, both indicating that there are no records at that court relating to the applicant. The director determined that the applicant failed to submit the actual final court disposition of her arrest in accordance with federal regulation, and denied the application on September 24, 2003.

On appeal, counsel submits: (1) a statement from the applicant explaining the circumstances of the arrest; (2) a letter dated October 1, 2003, from the Los Angeles Police Department indicating that the applicant was released on March 15, 1994, and that the reason for release was "PROSECUTION RELEASE-DETENTION ONLY-LACK OF SUFFICIENT EVIDENCE-NO CASE FILING INFORMATION FOUND IN L.A. COUNTY; and (3) two letters from the Superior Court of California, County of Los Angeles, dated June 23, 2003, and June 27, 2003, both indicting that no record was found regarding the applicant's arrest.

Subsequent to the appeal, Citizenship and Immigration Services received from the Los Angeles Police Department the arrest report relating to the applicant's arrest on March 12, 1994, and an illegible Disposition of Arrest and Court Action. This disposition does not indicate that the case was heard at a court, nor does it indicate that the applicant was convicted of the above offense. Based on this document, in conjunction with documents furnished on appeal, it is concluded that the applicant was not convicted of the felony offense of battery. Therefore, the director's decision to deny the application will be withdrawn.

The director did not find the criteria for continuous residence and continuous physical presence, as described in 8 C.F.R. § 244.2(b) and (c), to be lacking. Nor did the director find the applicant ineligible under any other provisions of 8 C.F.R. § 244.2.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has met that burden. As the director did not raise any other basis for the denial, the appeal will be sustained.

ORDER: The appeal is sustained.