

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

ML

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

FEB 24 2005

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

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 determined that the applicant was ineligible for TPS because she had been convicted of two felony offenses committed in the United States. The director, therefore, denied the application.

On appeal, counsel submits a statement. Counsel requests a six-month time frame to submit supporting documents. As of this date, no additional statement or evidence has been provided. Therefore, the record shall be considered complete.

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, now, the Secretary of the Department of Homeland Security (the Secretary), finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

Section 212(a)(2) of the Act 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 --

\* \* \*

(II) a violation of (or a conspiracy or attempt 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 U.S.C. § 802).

The Federal Bureau of Investigation (FBI) report, contained in the record of proceeding, reflects the following:

1. On July 29, 1987, in Los Angeles, California, the applicant was arrested and charged with possession of marijuana-hashish for sale. The FBI report shows that the applicant was convicted of the crime and sentenced to imprisonment for a period of 16 months.

2. On November 21, 1987, in Los Angeles, California, the applicant, under the name of [REDACTED] was arrested and charged with possession of phencyclidine, etc., for sale. The final disposition of this arrest is not reflected on the record.

3. On April 7, 1988, the applicant, under the name of [REDACTED] was arrested or received at the California Institute for Women, Frontera, California, for her conviction of possession of marijuana for sale. It is not clear in the FBI record if this conviction is related to paragraph 1 and/or 2 above.

Based on information contained in the FBI report, the director determined that the applicant was ineligible for TPS because she was convicted of one or more felony offenses.

On appeal, counsel states that the applicant asserts that she was not convicted of two crimes. He states that the applicant pled guilty to one crime that, upon information and belief, is not an aggravated felony. He further states that the alleged convictions of the applicant are over 15 years old and it will take an extensive amount of time for the applicant to obtain supporting documents. Counsel asserts that he had attached a letter from the court indicating that the records have been expunged or destroyed. This letter, however, is not included in the record.

The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

The record of proceeding, in this case, is devoid of the court's charging documents and final dispositions of the applicant's arrests. Nor is there evidence in the record that the applicant was requested to submit the court documents of all her arrests.

Therefore, the case will be remanded so that the director may accord the applicant an opportunity to submit arrest reports and the court's final dispositions of all her arrests.

It is also noted that files relating to the applicant's deportation proceedings were opened at Los Angeles, California, on April 19, 1998 [REDACTED], and at McAllen, Texas, on April 8, 1989 [REDACTED].

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.