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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
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FILE:



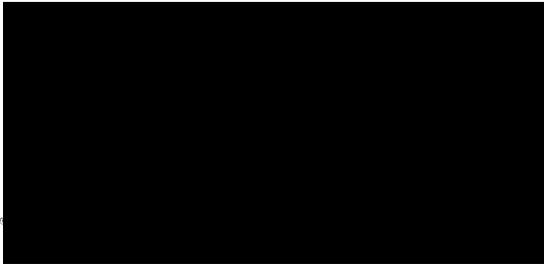
OFFICE: CALIFORNIA SERVICE CENTER

DATE: JUN 02 2005

[WAC 02 146 52659]

IN RE:

Applicant:



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 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 he had been convicted of two felony offenses, and because he was inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction. The director, therefore, denied the application.

On appeal, the applicant expresses remorse for his past behavior and apologizes to all whom he had offended. He states that he was guilty and he agreed to the punishment because it was well deserved. He submits letters from his two children requesting that the applicant be granted TPS.

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.

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.

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.

The record reveals the following offenses:

- (1) On February 5, 1985, in the Municipal Court of Los Angeles Judicial District, County of Los Angeles, California, [REDACTED] (arrest date November 3, 1984), the applicant was convicted of sell/furnish/etc. marijuana/hashish, 11360(a) H&S, a felony. He was placed on probation for a period of 36 months, and ordered to spend 135 days in jail.
- (2) On June 25, 1987, in the District Court, Montgomery County, Maryland, Docket No. [REDACTED] (arrest date April 23, 1987), the applicant was convicted of unlawful possession of a controlled substance, a misdemeanor. He was placed on probation for a period of 2 years/3 months/6 days, and his driver's license was suspended for 6 months.
- (3) The Federal Bureau of Investigation (FBI) fingerprint results report shows that on January 26, 1984, the applicant was arrested in Los Angeles, California, for Count 1, tampering with a vehicle; and Count 2, taking a vehicle without owner's consent/vehicle theft. The FBI report

shows that the applicant was convicted of these offenses on February 8, 1984; however, the actual final court disposition of this arrest is not contained in the record.

- (4) The FBI report shows that on March 31, 1984, in Los Angeles, California, the applicant was arrested for selling or transporting marijuana/hashish. The report shows that the applicant was released "DET ONLY/LACK OF CORPUS." However, the actual final court disposition of this arrest is not contained in the record.
- (5) The FBI report shows that on July 17, 1984, in Los Angeles, California, the applicant was arrested for selling or transporting marijuana/hashish. The report shows that the applicant was released "DET ONLY/LACK OF CORPUS." However, the actual final court disposition of this arrest is not contained in the record.
- (6) The FBI report shows that on August 20, 1984, in Los Angeles, California, the applicant was arrested for "sell/furnish/etc marijuana/hashish." The report shows that prosecution was REJECTED/LACK OF CORPUS." However, the actual final court disposition of this arrest is not contained in the record.

The applicant is ineligible for TPS due to his felony conviction (No. 1 above), and because he is inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act based on his drug-related convictions (Nos. 1 and 2 above). Sections 244(c)(2)(B)(i) and 244(c)(1)(A)(iii) of the Act. Consequently, the director's decision to deny the application will be affirmed.

It is noted in the record that on December 14, 1990, in Los Angeles, California, an immigration judge ordered the applicant deported to El Salvador.

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.