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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[WAC 01 199 54270]

Office: CALIFORNIA SERVICE CENTER

Date: JUN 02 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: 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.

Cindy N. Gomez fo
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 (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 he had been convicted of a felony or two or more misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant requests reconsideration.

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, 8 U.S.C. § 1182(a)(2), 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 ...

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or...

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

1. On October 30, 1991, in South Gate, California, the applicant, under the name of [REDACTED] was arrested and charged with (1) "receive/etc. known stolen property," and (2) "tampering with vehicle."
2. On March 18, 1993, in Los Angeles, California, the applicant, under the name of [REDACTED] was arrested and charged with the felony offense of burglary. On May 5, 1993, the applicant was received at the Correctional Institution Tehachapi, California, for 2nd degree burglary of vehicle.

Based on information contained in the FBI report, the director determined that the applicant was ineligible for TPS because he was convicted of the following charges:

4. March 31, 1993 – California Superior Court Los Angeles Van Nuys – 459 PC BURGLARY SECOND DEGREE (Felony).
5. April 16, 1993 – California Superior Court Los Angeles Van Nuys – 459 PC BURGLARY (Misdemeanor).

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 complete, actual court dispositions of the applicant's arrests to establish that he was, in fact, convicted of the crimes listed in the FBI report. Nor is there evidence in the record that the applicant was requested to submit the court dispositions of all of his arrests.

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

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.