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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:

Office: VERMONT SERVICE CENTER

Date: JUN 02 2005

[EAC 01 155 51368]

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
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 is ineligible for TPS because he was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II). The director, therefore, denied the application.

On appeal, the applicant asserts that he was not the person who was arrested for possession and sale of marijuana.

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.

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.

The record contains a "County Criminal History," issued by the "World Gaming Network" (WGN), address not shown, reflecting that [REDACTED] was convicted on May 6, 1994, in Los Angeles, California, of "possessing to sell," a felony, under Case No. [REDACTED]. The history report shows that the applicant was sentenced to serve 120 days in the county jail, placed on formal probation for a period of 3 years, and fined \$250.

Furnished with the WGN report is a "Certificate of Clearance Regarding Arrest," issued by the Los Angeles Police Department, indicating that the applicant asserts that he is not the person who was arrested on April 8, 1994 for 11359 HS, possession for sale of marijuana (a felony), that the fingerprints were taken and compared to the prints obtained at the time of the booking for the described offense, and that the comparison was performed by a trained Fingerprint Identification Expert and determined to be different.

It is noted that the conviction report was issued by the WGN, rather than by a court. There is no evidence in the record that the applicant was advised that this report was not acceptable as a replacement for court documents, nor was the applicant specifically requested to submit court records.

It is further noted that the director indicated that the Federal Bureau of Investigation (FBI) twice rejected the applicant's fingerprints. The case, however, will be remanded so that the director may reschedule the applicant for another fingerprint appointment. Absent a definitive response from the FBI, Citizenship and Immigration Services will be prohibited from making a positive determination in favor of the applicant.

Additionally, the record contains documentation submitted by the applicant reflecting Social Security Number [REDACTED], the earnings statements and Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements [REDACTED], IRS Forms 1040A income tax returns; and [REDACTED] by the Social Security Administration. Further, the applicant has not submitted sufficient evidence to establish qualifying continuous physical presence in the United States described in 8 C.F.R. § 244.2(b). The applicant shall

be provided the opportunity to present an explanation of these discrepancies and to present sufficient evidence of his continuous physical presence and continuous residence during the requisite time frames.

It is also noted that the applicant was the beneficiary in a Form I-130, Petition for Alien Relative, filed on his behalf, under record [REDACTED], in which an attempt to gain benefits through apparent fraud was recognized and denied.

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.