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

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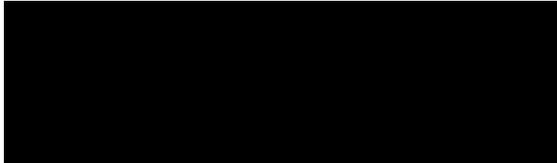
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FILE: [REDACTED]
[WAC 01 239 56387]

OFFICE: CALIFORNIA SERVICE CENTER DATE: JUN 22 2005

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, California Service Center, and is now before the Administrative Appeals Office (AAO) 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 a felony offense committed in the United States. The director, therefore, denied the application.

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 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 Federal Bureau of Investigations (FBI) Identification Report contained in the record of proceeding reflects the following:

1. On August 26, 1998, the applicant was arrested under the name "[REDACTED]" by police officers in Los Angeles, California, and charged with transporting and/or selling a narcotic controlled substance, a felony. A hand-written notation on the FBI report indicates that the applicant was convicted of transporting/selling a narcotic/controlled substance in violation of section 11352(a) HS, a felony, in the Superior Court of California, County of Los Angeles, on January 14, 1999.
2. On May 23, 2002, the applicant was arrested under the name "[REDACTED]" by police officers in Los Angeles, California, and charged with one count of transporting and/or selling a narcotic/controlled substance.

On November 20, 2003, the applicant was requested to submit additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time frames and to provide certified copies of the final court dispositions of his arrests, as detailed above. In response, the

applicant provided documentation relating to his continuous residence and continuous physical presence in the United States during the requisite time frames and a document from the Clerk of the Superior Court of California, County of Los Angeles, stating that no felony record was found in that court for [REDACTED] date of birth May 11, 1969. It is noted that the applicant was arrested under the names [REDACTED] and [REDACTED] not under the name [REDACTED]. The court document specifically indicates that the felony record search was conducted **by name only**.

Based on the hand-written notation on the FBI report, the director determined that the applicant was ineligible for TPS because he had been convicted of a felony.

On appeal, the applicant states that he is a hard-working individual and has a close family. He further states that he supports two of his children and his parents in El Salvador; however, the applicant failed to provide the final court disposition of the offenses detailed in Nos. 1 and 2 above.

The director erroneously denied the application based on the conviction information contained in the FBI identification record. However, the applicant has been provided with an opportunity to submit the final court disposition of his arrests, but he failed to provide the requested court documents. As stated previously, the applicant, in response to the Notice of Intent to Deny, provided a document from the Clerk of the Superior Court of California, County of Los Angeles, stating that no felony record was found in that court for [REDACTED] date of birth May 11, 1969. The applicant did not request a search of court records using either name under which he was arrested.

The applicant has failed, both in response to the Notice of Intent to Deny and again on appeal, to provide the final court disposition of the offenses detailed in Nos. 1 and 2 above. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Therefore, the applicant also must be denied for these reasons.

It is noted that the applicant was apprehended by United States Border Patrol Agents on July 12, 1996, near El Paso, Texas, and placed in removal [deportation] proceedings. There is no indication in the record that a removal hearing was ever held.

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.