



U.S. Citizenship  
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FILE: [REDACTED]  
[SRC 01 256 56867]

Office: TEXAS SERVICE CENTER

Date: JUN 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: 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, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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.

In her Notice of Intent to Deny (NOID) dated January 20, 2004, the director specified four arrests that were attributed to the applicant as a result of his FBI background check and requested that he provide certificates of dispositions for the arrests and police history and clearance checks for every city in which he had lived for the past five years. The director denied the application because the applicant had not provided the requested documentation.

On appeal, the applicant states the decision was in error because he was not convinced of the crimes alleged. The applicant states that he will provide proof that the case(s) were dismissed by the Court of Appeals in Washington.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS if the 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 that 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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "felony" and "misdemeanor" as:

*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.

The record reflects the following offenses:

- (1) On March 18, 1992, the applicant was arrested by the Houston, Texas Police Department and charged with "delivery narcotics." On April 16, 1992, the applicant pled guilty and was convicted of "unlawfully, intentionally, and knowingly deliver by actual transfer more than five pounds and less than fifty pounds of marihuana." (Cause No. [REDACTED] a felony, for which he was sentenced to eight years in prison by a presiding judge of the 228<sup>rd</sup> District Court of Harris County, Texas.
- (2) On July 27, 1993, the applicant was arrested by the Houston, Texas Police Department and charged with "Possession of cocaine." On July 1, 1994, the applicant was found guilty by a jury of "Unlawfully, intentionally, & knowingly possessing with intent to deliver a controlled substance, namely, cocaine weighing less than 28 grams by aggregate weight..." (Cause No.

██████████ a felony, for which he was sentenced to twenty five years in prison by a presiding judge of the 176<sup>th</sup> District Court of Harris County, Texas.

The applicant is ineligible for TPS due to his record of the two felony convictions detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Also, 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. Additionally, any alien convicted of two or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were five years or more is inadmissible. Section 212(a)(2)(B) of the Act. Consequently, the director's decision to deny the application is affirmed.

It is noted that the record contains an executed Form I-205, Warrant of Removal/Deportation, for the applicant issued by the District Director in Houston, Texas showing that he was deported from the United States on October 2, 1997 at Brownsville, Texas.

Finally, on September 29, 1997, the applicant related his biographical data to an employee of the Immigration and Naturalization Service, (now U.S. Immigration and Customs Enforcement). He claimed that he had been born in Matamoros, Mexico on February 23, 1966 and that his father and mother were Mexican. He stated that his father's name was ██████████ and his mother's name was ██████████. Additionally, the record shows that the applicant was deported to Mexico on October 2, 1997 based upon his claim to being a Mexican citizen. However, the record now contains a birth certificate showing that the applicant was born on February 23, 1968 in Honduras to a ██████████. Based upon these separate claims by the applicant, it is determined that he has failed to establish that he is a native and citizen of El Salvador. Therefore, the application is denied for this additional reason.

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.