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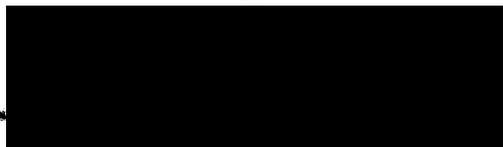
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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Services

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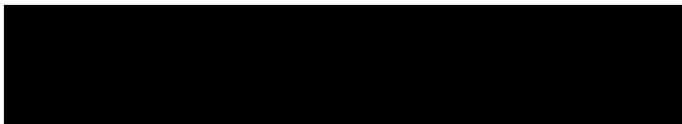


OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAR 17 2005

IN RE:

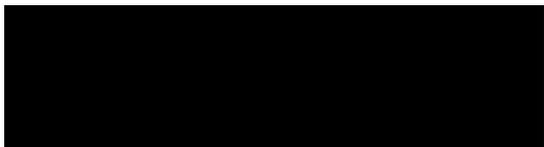
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 denied the application because the applicant had been convicted of two misdemeanors committed in the United States.

On appeal, the applicant submits a statement and additional evidence. He states that he needs an additional 12 months in which to submit a brief and/or evidence because he has filed a request to the court to dismiss his conviction. To date, the file contains no further response from the applicant. Therefore, the record shall be considered complete.

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.

The record shows that on March 20, 2001, in the Municipal Court of Los Angeles, Criminal Judicial District, County of Los Angeles, California, Case No. [REDACTED] the applicant was indicted for Count 1, assault with a deadly weapon or instrument, 245(a)(1) PC, a misdemeanor; Count 2, exhibiting a deadly weapon other than a firearm, 417(a)(1) PC, a misdemeanor; Count 3, carrying a concealed weapon within a vehicle, 12025(a)(1) PC, a misdemeanor; and Count 4, carrying a loaded firearm, 12031(a)(1) PC, a misdemeanor. On April 17, 2001, the court ordered the complaint amended by adding Count 5, public intoxication: drugs/alcohol, 647(f) PC, a misdemeanor; and Count 6, possession of a weapon, 12020(a)(1) PC, a misdemeanor. The court found the applicant guilty of Counts 5 and 6. He was placed on probation for a period of 36 months as to Count 4. As to Count 5, the applicant was placed on probation for a period of 36 months under the condition that he serve 90 days in the county jail, and pay \$188 in fines and costs. Counts 1, 2, 3, and 4 were dismissed.

On appeal, the applicant asserts that he was improperly charged with possession of a weapon because he had a permit to expose and carry a firearm. He states that he has already filed a request to the court to dismiss this conviction and is waiting for an answer to his request; therefore, he needs an extension of 12 months or until the court makes a determination of his request for dismissal of his conviction.

The court record, however, clearly shows that the applicant was convicted of the crime of possession of a weapon. Citizenship and Immigration Services (CIS) is required to rely on the court record as it stands, and cannot make determinations of guilt or innocence based on that record. Furthermore, CIS may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

The applicant is ineligible for TPS due to his two misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

It is noted that the record of proceeding contains an outstanding Warrant of Removal/Deportation, Form I-205, issued on July 25, 1998, and that the applicant failed to appear at the Los Angeles district office on September 15, 1998, for his enforced departure.

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.