



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



MI

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 21 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

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 claims to be a native and citizen of El Salvador 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 two or more misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant states that the misdemeanor charges listed in the director's decision were later dropped, and that he was never convicted of the charges.

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.

The FBI report, contained in the record of proceeding, reflects that on May 18, 1987, in Florida, the applicant was arrested and charged with two misdemeanors. The FBI report shows that the applicant was convicted of these charges on June 1, 1987.

Based on information contained in the FBI report, the director determined that the applicant was ineligible for TPS because he was convicted of two misdemeanor offenses.

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 is devoid of the final 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 final court dispositions of all of his arrests.

It is noted that the applicant has provided insufficient evidence of his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001. The applicant also has presented insufficient evidence of his nationality and identity. When arrested in 1987, the applicant indicated that he was a Mexican national.

The case will, therefore, be remanded so that the director may accord the applicant an opportunity to submit the court's final dispositions of all of his arrests, and documentation to overcome the additional findings discussed above.

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.