

U.S. DEPARTMENT OF HOMELAND SECURITY
DIVISION OF PERSONAL IDENTITY



U.S. Citizenship
and Immigration
Services

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MAY 27 2006

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE:
[WAC 01 172 59285]

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, California Service Center. The application 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.

The director denied the application because he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant submits a statement and additional evidence.

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.
8 C.F.R. § 244.1.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

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.

Any alien convicted of 2 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 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

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 record indicates that the applicant was arrested on March 12, 1997, in Fresno, California, and charged with one count of carrying a concealed weapon in a vehicle in violation of section 12025(a) PC, a felony, and one count of carrying a loaded firearm in a public place in violation of section 12031(a) PC.

Pursuant to a letter dated July 21, 2003, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant was also requested to submit evidence of identity and nationality and additional 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. In response, the applicant submitted evidence of identity and nationality and additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant also submitted a minute order from the Superior Court of California, County of Fresno, indicating that the applicant pled guilty to the amended charge of having in his possession a firearm after having been convicted of a felony in violation of section 12021(a), a felony.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on December 17, 2003.

On appeal, the applicant states that the first time he tried to get a copy of the final court disposition of the charge detailed above he forgot to list the alias under which he was arrested, "Jose Gonzales," and the court found no criminal record under his true and correct name, Saul Portillo-Posada. The applicant submits a "Certificate of Search" from the Superior Court of California, County of Fresno, indicating that he was convicted of having a firearm in his possession after having been convicted of a felony in violation of section 12021(a) PC, and was sentenced to three years of conditional probation, a fine, and restitution. The applicant also submitted a "Register of Actions" from the same court indicating that the applicant pled guilty to having a firearm in his possession after having been convicted of a felony in violation of section 12021(a), a felony. Count 2, carrying a loaded firearm in public, was dismissed.

On appeal, the applicant has provided a court document from the Superior Court of California, County of Fresno, that establishes that he has been convicted of a felony. The applicant is ineligible for TPS due to his record of a felony conviction, detailed above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application will be affirmed.

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.