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U.S. Citizenship
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Services

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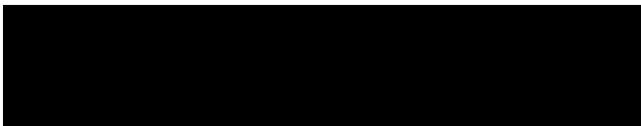


OFFICE: CALIFORNIA SERVICE CENTER DATE: NOV 09 2005

[WAC 01243 57963]

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, 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 matter will be remanded for further consideration and action.

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.

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.

The record reveals that the following offenses:

1. The record contains information indicating [REDACTED] a national of El Salvador born on April 16, 1978, Social Security Number [REDACTED] was convicted of "AGGRAV ASSLT - WEAPON" on March 1, 1996.
2. The applicant was arrested in Anaheim, California, on June 7, 1999, and charged with one count of rape by force in violation of section 261(a)(2) PC, a felony.

Pursuant to a letter dated November 3, 2003, the applicant was requested to submit police clearances for every city in which the applicant has lived since his entry into the United States and the final court dispositions of all arrests since his arrival in the United States. In response, the applicant provided the following:

1. a letter dated December 31, 2003, from the City of Anaheim Police Department stating that the applicant was arrested on June 7, 1999, on the charge of forcible rape in violation of section 261(a)(2) PC, but he was released under section 849(b)(1) PC on December 10, 2001;
2. an Anaheim Police Department Crime Report relating to the applicant's arrest on June 7, 1999;

3. a Certificate of Release indicating that the applicant was detained by the Anaheim Police Department on June 7, 1999, but was released on June 9, 1999, because the arresting officer was satisfied that there were insufficient grounds for making a criminal complaint against him.; and,
4. a Disposition of Arrest and Court Action indicating that the applicant was released on June 9, 1999, because the District Attorney declined prosecution in connection with the applicant's arrest on June 7, 1999.

However, the applicant failed to provide the final court disposition relating to the charge of "AGGRAV ASSLT - WEAPON." The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on January 30, 2004.

On appeal, the applicant states, "I entered the United States on April 15, 1998, and the Service Center is requesting a court disposition of an arrest on March 1996. There is a mistake with this arrest and I am being confused with someone else." He does not, however, submit any court documents relating to his conviction on the charge of "AGGRAV ASSLT - WEAPON."

Although the applicant claims that he didn't enter the United States until April 15, 1998, the record contains information indicating that the applicant was convicted of aggravated assault with a weapon on March 1, 1996. The matter will be remanded, and the director shall fully review the evidence of record pertaining to the applicant's criminal record. The director may request any other evidence necessary for the proper adjudication of the application. The director shall also review the evidence submitted by the applicant to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

It is noted that the applicant was interviewed in the Anaheim Jail by officers of the Immigration and Naturalization Service (now Immigration and Customs Enforcement) on June 7, 1999. It was determined that he was an alien who entered the United States without inspection, and he was issued a notice to appear for a hearing before an Immigration Judge. On October 7, 1999, an Immigration Judge in Los Angeles, California, granted the applicant the privilege of voluntary departure on or before February 4, 2000, with an alternate order of deportation if he failed to depart in compliance with the grant of voluntary departure. The applicant failed to depart the United States in compliance with the grant of voluntary departure.

On March 25, 2000, the District Director, Los Angeles issued a Form I-166 letter ordering the applicant to report to the Los Angeles District Office for deportation to El Salvador on June 14, 2000, along with a Form I-205, Warrant of Removal/Deportation. The applicant failed to appear at the Los Angeles District Office to be deported as ordered. To date, the Warrant of Removal/Deportation remains outstanding.

In view of the foregoing, the previous decision of the director will be withdrawn. The case is remanded to the director for consideration and discussion of all issues pertinent to this case. The director may request any additional evidence he considers pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

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 matter is remanded for further action consistent with the foregoing and entry of a new decision.