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FILE: [REDACTED]
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Office: TEXAS SERVICE CENTER Date:

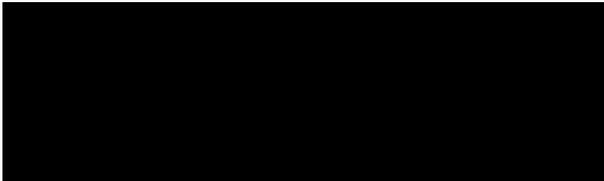
NOV 09 2005

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:



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 M. Gomez

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 case will be remanded to the director for further action.

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 determined that the applicant was ineligible for TPS because he had been convicted on June 3, 1999, of aggravated assault with a deadly weapon, a felony offense, pursuant to section 244(c)(2)(B)(i) of the Act, and a crime involving moral turpitude pursuant to section 212(a)(2)(A)(i)(I) of the Act. The director, therefore, denied the application.

On appeal, counsel asserts that the application was wrongly denied because the applicant has never been arrested and has no criminal record. Counsel states that the applicant's fingerprints were compared to the Dallas County Criminal Records Department, and they do not match the fingerprints of the person who had been convicted of the crime.

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, finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

The record shows that on December 29, 1998, in the 204th District Court of Dallas County, Texas, Cause No. F- [REDACTED] was indicted for the felony offense of aggravated assault with a deadly weapon. On June 3, 1999, the court granted the State's motion to reduce the felony offense he was originally charged to the lesser and included misdemeanor offense of assault, a class A misdemeanor offense. The court found [REDACTED] guilty of the lesser and included offense of assault, a class A misdemeanor. The record further indicates that [REDACTED] was subsequently deported from the United States on September 3, 1999. It is noted that in removal proceedings on June 30, 1999, [REDACTED] indicated that his real name was [REDACTED].

Counsel submits a statement from the Sheriff's Office, Dallas, Texas, stating that, "A comparison of your fingerprints with the fingerprints of the individual who was arrested and charged with this/these offense(s) indicates that you are not the person who was arrested and charged with this/these offense(s)." Counsel also submits a felony record search from the Clerk of the District Criminal Courts of Dallas County, Texas, certifying that the court indexes have been searched and are unable to locate any charges or convictions filed against the applicant during and including the year of 1973 through December 8, 2002.

The record of proceeding was reviewed and it is noted that the photographs of this applicant and the name of this applicant's mother do not match those of [REDACTED]. Additionally, the Federal Bureau of Investigation (FBI) fingerprint results report, processed by the FBI on March 5, 2002, indicates that this applicant has no arrest record ("NON-IDENT").

Based on this review, and the FBI report, it appears that two individuals may have been using the same identity; and one of these individuals has a criminal record. However, the person convicted of the above offense was ultimately convicted of only a misdemeanor. This one misdemeanor conviction falls under the exception to inadmissibility provided in section 212(a)(2)(A)(ii), as an alien convicted of only one crime of moral turpitude, where the maximum penalty possible for the crime did not exceed imprisonment for one year.

The evidence contained in the record of proceeding is insufficient to establish qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Further, the true identity of each individual sharing this particular record cannot be determined by a review of the evidence submitted.

Therefore, the case will be remanded so that the director can review the evidence and request a full review of the circumstances surrounding this case.

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 case is remanded to the director for appropriate action consistent with the above discussion and entry of a new decision.