

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



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

M 1

[REDACTED]

FILE:

Office: TEXAS SERVICE CENTER

Date: OCT 03 2005

[REDACTED]  
[SRC 01 273 56461]

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*

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 appeal will be sustained.

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 after determining that the applicant had failed to comply with her request to submit final court dispositions for two arrests as indicated in the results of her Federal Bureau of Investigation (FBI) fingerprint results report.

On appeal, the applicant states that she was arrested by mistake. She submits a letter dated September 3, 2004 from [REDACTED] the Chief Deputy Clerk for the Washington County Court of the State of Arkansas in Fayetteville, Arkansas. [REDACTED] states that her office completed a criminal search concerning the applicant from 1992 through the present and that her office found no charges or convictions under the name [REDACTED]

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS 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.

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.

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 FBI fingerprint results report, contained in the record of proceeding, reflects the following:

On May 5, 1999, the Fourth Judicial Drug Task Force in Fayetteville arrested the applicant under the [REDACTED] and entered two charges. The first charge was "FC Delv, Poss, Manu, Etc Drug Para" and the second charge was "FC Poss, Etc Cntrft Sub w/int Sch I."

On January 15, 2004 the director sent the applicant a Notice of Intent to Deny requesting evidence regarding any criminal arrests. The applicant did not respond to that request.

Based on the information contained in the FBI report, the director determined that the applicant was ineligible for TPS because she failed to comply with her request to submit final court dispositions for the two charges stemming from her May 5, 1999 arrest, and denied the application on August 25, 2004.

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.

On appeal, the applicant states that she was arrested by mistake. She submits the letter cited above dated September 3, 2004, from [REDACTED], the Chief Deputy Clerk for the Washington County Court of the State of Arkansas in Fayetteville, Arkansas, indicating that the applicant was not charged or convicted in that jurisdiction. Additionally, the record also contains a separate court inquiry report prepared for Citizenship and Immigration Services dated August 23, 2005. The report shows that there exists no record concerning felony or misdemeanor charges or convictions attributed to the applicant in the indices of the Washington County Circuit Court or the Washington County Fayetteville District Court for the period from August 21, 1995 through August 3, 2005.

The applicant asserts that she was arrested by mistake and submits evidence to substantiate her assertion. Additionally, the record contains an independent report prepared for CIS that supports her assertion. As the record does not show that the applicant is ineligible for TPS based on criminal conviction(s) pursuant to section 244(c)(2)(B)(i) of the Act, the finding of the director will be withdrawn.

The director did not find the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. §§ 244.2(b) and (c), to be lacking, or that the applicant was ineligible under any other provisions of 8 C.F.R. § 244.2. As the director did not raise any other basis for denial, her decision will be withdrawn and the application will be approved.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden.

It is noted that removal proceedings against the applicant initiated in Memphis, Tennessee, on December 5, 1997, were administratively closed by the Board of Immigration Appeals on June 26, 2001, to allow the applicant to file for TPS. However, it is also noted that the record contains an unexecuted warrant of deportation [removal] issued on November 16, 1993, at San Diego, California.

**ORDER:** The appeal is sustained.