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FILE:  Office: CALIFORNIA SERVICE CENTER Date: **OCT 03 2005**

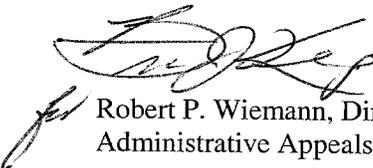
IN RE: Applicant: 

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, and is now before the Administrative Appeals Office (AAO) 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 denied the application after determining that the applicant was convicted of a felony or two or more misdemeanors committed in the United States.

On appeal, the applicant asserts that he has no pending criminal records. He submits a letter from the Los Angeles Superior Court, dated July 22, 2004, indicating that the court indexes were examined, by name only, and that no record was found regarding the applicant.

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).

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.

The Federal Bureau of Investigation (FBI) fingerprint results report and the records of the Department of Homeland Security (DHS) database, contained in the record of proceeding, reflect the following in California:

- (1) The DHS records show that the applicant was arrested on April 18, 1990, for drunk in public, 647(f) PC, a misdemeanor, and that he was subsequently convicted of this offense.
- (2) The FBI report shows that the applicant was arrested on April 7, 1991, for possession of a weapon to commit assault. The report shows that the applicant was subsequently convicted of this offense.
- (3) The FBI report shows that the applicant was arrested on January 19, 1997, for Count 1, petty theft; and Count 2, trespassing.
- (4) The FBI report shows that the applicant was arrested for "DISORD CONDUCT, UI/DRUG" on June 13, 1999, on January 19, 2000, on February 17, 2000, and on February 19, 2000.
- (5) The FBI report shows that the applicant was arrested for "DISORD CONDUCT, DRUG W/ALC" on July 16, 1999, on July 20, 1999, and on January 30, 2000.

Based on information contained in the FBI report and the DHS database, the director determined that the applicant was ineligible for TPS because he was convicted of a felony or two or more misdemeanors.

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 of proceeding, in this case, is devoid of the complete, actual final court dispositions of the applicant's arrests to establish that he was in fact convicted of the crimes listed in the FBI report and the DHS database. Nor is there evidence in the record that the applicant was provided the opportunity to submit the court dispositions of all of his arrests.

The case will, therefore, be remanded so that the director may accord the applicant an opportunity to submit arrest reports and the final court dispositions of all of his arrests.

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 for appropriate action consistent with the above discussion and entry of a new decision.