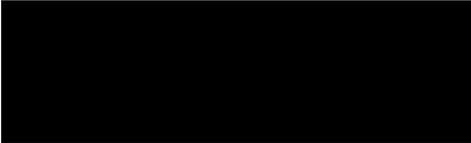


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MI

FILE: [Redacted]
[WAC 01 173 50692]

Office: CALIFORNIA SERVICE CENTER

Date: **OCT 27 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: 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.

Cindy M. Gomez
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 determined that the applicant was ineligible for TPS because he had been convicted of a felony or two or more misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant asserts that he did not knowingly or intentionally violate the law, but that any error on his part was due to his lack of knowledge and understanding of the law. He further asserts that he has provided sufficient new and material evidence establishing the remorse of his past behavior, that he is now totally respectful of the law, and that a return to his native country will seriously affect his life.

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.

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

- (1) On November 3, 2001, in Colorado, the applicant was arrested for Count 1, C.R.S. 42-4-1301(1A), driving under the influence of alcohol; Count 2, C.R.S. 42-4-1301(2), driving under the influence of alcohol; and Count 3, C.R.S. 42-4-1007, lane use.
- (2) On June 30, 2002, in Colorado, the applicant was arrested for Count 1, C.R.S. 3899, domestic violence; Count 2, C.R.S. 1399, third degree assault; and Count 3, C.R.S. 1399, third degree assault. The Colorado Bureau of Investigation report shows that the applicant was convicted of Counts 1 and 3.

Based on information contained in the FBI report, the DHS database, and the CBI report, the director determined that the applicant was ineligible for TPS because he was convicted of the offenses listed above.

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 final court dispositions of the applicant's arrests to establish that he was in fact convicted of the crimes listed in the FBI report, the DHS database, and the CBI report. Nor is there evidence in the record that the applicant was provided the opportunity to submit the court dispositions of all of his arrests. It is noted that the FBI report does not indicate the final dispositions of these arrests.

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

It is also noted that the applicant was given permission to voluntarily depart the United States on November 8, 1996, and that he failed to depart. A Warrant of Deportation [Removal] was issued on June 3, 1997, at Los Angeles, California.

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 director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.