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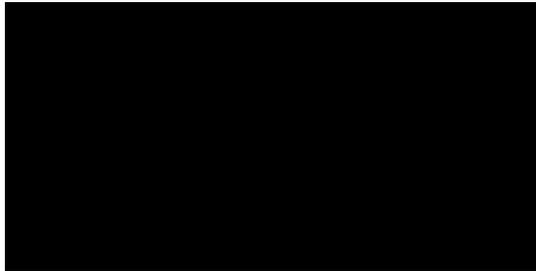
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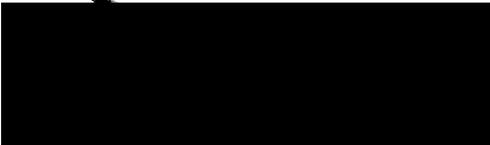
DATE: **JAN 23 2006**

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:



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, Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a native and citizen of El Salvador and 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 TPS application because she found that the applicant had failed to submit the final court disposition of a charge of petty theft stemming from his arrest in 1991 by the Seaside Police Department, theft of personal property stemming from his arrest in 1991 by the Salinas Sheriff's Office, and driving under the influence of alcohol drugs with injury stemming from his arrest in 1994 by the Salinas Sheriff's Office.

On appeal, counsel asserts that the applicant has complied with all of the director's request for the final court dispositions stemming from his arrest on criminal charges in 1991 and 1994. Counsel refers to the Superior Court of California, County of Monterey, Deputy Clerk's letter submitted as evidence on appeal.

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.

The record reveals the following offenses in California:

- On June 1, 1991, the applicant was arrested by the Seaside Police Department and charged with petty theft.
- On June 3, 1991, the applicant was arrested by the Salinas Sheriff's Office and charged with theft of personal property.
- On February 13, 1994, the applicant was arrested by the Salinas Sheriff's Office and charged with DUI alcohol drugs with injury.

The applicant submitted the following documentation as evidence of the final court dispositions stemming from his criminal arrests in 1991 and 1994:

- a) A copy of the Seaside Police Department arrest record dated June 1, 1991 of [REDACTED] [REDACTED] date of birth August 20, 1971;

- b) A copy of a request for arrest record dated October 30, 2002 for [REDACTED] [REDACTED] date of birth January 2, 1968, which contained a stamped response that read: "based on ID provided . . . see attached";¹
- c) A letter from the Deputy Clerk, Superior court of California, County of Monterey dated October 3, 2002, in which it is stated that no record of any filing nor convictions were found researching the applicant's names and date of birth given;
- d) A photocopy of an arrest record dated January 9, 1991, containing the photograph of Saul Antonio Quintanilla with a date of birth of January 2, 1968; and,
- e) A copy of a FBI identification record regarding the applicants 1991 and 1994 arrests.

The director in the Notice of Intent to Deny dated June 20, 2002, specifically requested that the applicant submit the final disposition of every charge against him, including:

1. June 1, 1991, under agency case number [REDACTED] by the Seaside Police Department and charged with petty theft;
2. June 3, 1991, under agency case number [REDACTED] by the Salinas Sheriff's Office and charged with theft of personal property;
3. The criminal history check also lists your name as [REDACTED]. Please submit a sworn statement explaining these two discrepancies;
4. February 13, 1994, under agency case number [REDACTED] by the Salinas Sheriff's Office and charged with DUI alcohol drugs with injury. The criminal history check also lists your name as [REDACTED]. Please submit a sworn statement explaining these two discrepancies.

In a response to the director's request for evidence, counsel for the applicant stated that with respect to the director's inquiry number 1, the applicant believes and states that the charge does not refer to him; with respect to inquiry number 2, the applicant believes and states that the charge does not refer to him; with respect to inquiry number 3, the applicant orally declared that he had never used the name [REDACTED] and with respect to inquiry number 4, the applicant concedes to the DUI charge. See Attorney's response to director's request for evidence.

The director subsequently denied the petition noting that the applicant had failed to provide final court dispositions stemming from his 1991 and 1994 criminal arrests.

On appeal, counsel asserts that the applicant has complied with all requests made by the Service Center Director with respect to final criminal court dispositions. Counsel further asserts that the Deputy Clerk of the Superior Court of California, Monterey County stated in a letter dated October 3, 2002, "The records of the Court have been searched for any charges against [REDACTED] date of birth 01/02/1968, AKA: [REDACTED]. We find no record of any filing or convictions in this Court for this individual based on the information provided." (No. 3 above).

Contrary to counsel's assertions, the record of proceeding indicates that a search based on the applicant's fingerprints reveals that he was arrested in 1991 and 1994 and used names and dates of birth other than that which were given to the Superior Court of California to be used as a basis for their search. See (Letters a, b,

¹ It is noted that the neither the applicant nor counsel submitted the "attached" documents.

d, and e above). The applicant has the burden of proving that he meets the eligibility requirements for TPS. The director's request was not necessarily for the original court records, but rather for the final disposition of the arrest charges. Without documentation attesting to the final court dispositions, the AAO is unable to determine the applicant's eligibility for TPS. Therefore, the director's decision to deny the application will be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.