

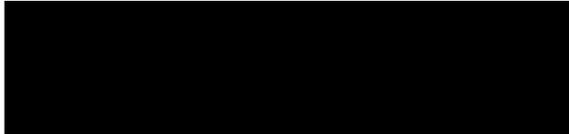
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U.S. Citizenship
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FILE: [REDACTED] OFFICE: TEXAS SERVICE CENTER DATE: MAY 03 2006
[SRC 01 162 56239]

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 because she found the applicant failed to submit evidence relating to her criminal record.

On appeal, the applicant submits a statement and additional evidence.

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.

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 record reveals the following offenses:

On June 12, 1992, the applicant was arrested by the Sheriff’s Office, Jefferson, Georgia, and charged with Cruelty to Children, and the added charge of Reckless Conduct.

On appeal, the applicant states that she traveled two days from Florida to Georgia to obtain the required final court dispositions, and received the certified mail receipt indicating the documents had been delivered to the Texas Service Center. She states that in light of having sent the documents, she does not understand why her case was denied. She states that she understands that she committed a crime and believes that she has paid her time. She asks not to have to “pay again” for her mistake. In support of the appeal, the applicant submits:

1. A Final Disposition, In the Superior Court of Jackson County, Georgia, [REDACTED], dated September 18, 1992, indicating a plea of nolo contendere, a fine, community service, parenting class requirements, and a felony sentence of “3 yrs; 12 months” that may be served on probation for the charges of “Cruelty to Children (2 Counts); Reckless Conduct (2 Counts);”
2. A letter dated February 27, 2003, from the Clerk of Court, Jackson County, Georgia, certifying the documents as “a true and correct copy of the INDICTMENT WITH GUILTY PLEA, THE FELONY SENTENCE AND THE ORDER OF NOL PROS in regard to Jackson Superior Court [REDACTED] State vs. JOSEFA GARCIA charged with CRUELTY TO CHILDREN X 4

AND RECKELSS CONDUCT X 4 as it appears on the records of this court,” with copies of the specified documents; and,

3. A record search dated April 3, 2002, from the Homestead Police Department, Florida, indicating no criminal history under the applicant’s name in the local records.

The applicant is ineligible for TPS due to her record of at least one felony conviction, detailed above. 8 C.F.R. § 244.4(a). Consequently, the director’s decision to deny the application for this reason 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.