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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

[REDACTED]

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FILE:

[REDACTED]

[LIN 02 218 50054]

OFFICE: SEATTLE (SPOKANE)

DATE:

**JUL 05 2007**

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:

[REDACTED]

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 for*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Seattle, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the district 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 district director denied the application because he found the applicant inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

On appeal, the applicant submits a statement.

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.

On April 4, 2001, in the County of Benton, Washington, the applicant was arrested and charged with a felony. On May 21, 2001, in the Superior Court of the State of Washington, County of Benton/Franklin, Juvenile Division, Case No. [REDACTED] the original charge was amended to a gross-misdemeanor, and the applicant was entered into a diversion program.

The record reflects that the applicant was born on April 28, 1984. He was seventeen years of age when he was tried in Juvenile Court for the offense committed. The Board, in *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981), held that acts of juvenile delinquency<sup>1</sup> are not crimes in the United States and that an adjudication

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<sup>1</sup> Juvenile delinquency is defined by the Federal Juvenile Delinquency Act, 18 U.S.C. 5031, as "the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult."

of delinquency is not a conviction for a crime within the meaning of the Immigration and Nationality Act. The Board further held that since an act of juvenile delinquency is not a crime for the purposes of immigration laws, then such conduct cannot serve as the basis of a finding of inadmissibility. Additionally, the applicant's arrest was adjudicated to one misdemeanor offense, and he was entered into a diversion program. Diversion has been found not a conviction for immigration purposes; therefore, the applicant is not ineligible under the provisions of section 244(c)(2)(B)(i) of the Act based on his criminal record. Further, the applicant's juvenile record cannot act as a bar to his eligibility for TPS under this section of the Act.

The district director, however, noted that on August 24, 1998, the applicant completed Form I-9, Employment Eligibility Verification in connection with an application for employment, and he indicated on that form that his alien registration number was [REDACTED], and his social security number was [REDACTED]. He also noted that the applicant failed to disclose any arrest on his application for TPS (Form I-821). The district director, therefore, determined that the applicant was inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for fraud and misrepresentation, because he failed to disclose his criminal history and because he had sought to gain the benefits of employment authorization under the Act by falsely claiming authorization to work.

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible. Section 212(a)(6)(C)(i) of the Act.

Except as provided in clause (iii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Section 244(c)(2)(A)(ii) of the Act.

On appeal, the applicant explains that when he was in juvenile detention, an official of the Department of Homeland Security (DHS) gave him the TPS application to file, and he assumed that because he was under DHS "hold," a copy of his record would be sent to the office processing the TPS applications; therefore, he did not mention nor did he send a copy of his criminal record. The applicant requests reconsideration because he is paying child support and he has visitation rights to see his son.

It is noted that the record indicates that the Immigration Judge, Seattle, Washington, on August 3, 2001, with the facts discussed available in the record, terminated removal proceedings "for family reunification and to file for TPS."

The record shows that the district director stated that, upon review of the record, he determined that the applicant's "circumstances are such that they do not warrant an exercise of discretion." He concluded that the applicant was inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, and denied the application. The record, however, is devoid of evidence to show that the applicant was requested to file a Form I-601, Application for Waiver of Grounds of Inadmissibility, a requirement under 8 C.F.R. § 244.3(b). Therefore, the case will be remanded so that the district director may accord the applicant the opportunity to file a Form I-601. The district director shall then adjudicate the application accordingly. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS. An adverse decision on the waiver application may be appealed to the AAO.

The record of proceeding contains the Federal Bureau of Investigation fingerprint results report indicating that on January 25, 2005, in Kennewick, Washington, the applicant was arrested for "driving under the influence." The final court disposition of this arrest is not included in the record.



Page 4

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.