



U.S. Citizenship
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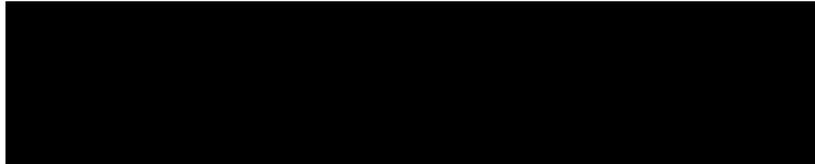
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FILE: [REDACTED]
[WAC 06 102 70157]

OFFICE: California Service Center

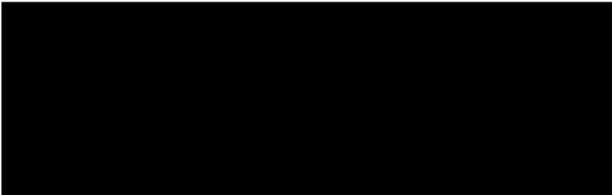
DATE: JUN 15 2007

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.

Cindy M. Gomez
Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant claims to be a 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 on the ground that the applicant failed to provide the final court dispositions of three arrests in the United States.

On appeal, counsel states that neither she nor the applicant ever received the notice of intent to deny.

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.
8 C.F.R. § 244.1.

The record shows that the applicant filed his initial Form I-821, Application for Temporary Protected Status, on January 10, 2006. On June 28, 2006, the Federal Bureau of Investigation (FBI), in its fingerprint results report, indicated that the applicant had been arrested twice in California and once in Minnesota, each time under a different name. The three arrests were listed as follows:

1. On April 24, 1991, the applicant was arrested under the name of [REDACTED] by the Los Angeles Police Department (LAPD) and charged with “ADW no firearms/GBI.” The FBI report indicates that the applicant faced two charges in the Municipal Court of Metropolitan Los Angeles, identified as : (a) [section] 242 battery, which was dismissed, and (b) [section] 245A(1) “Force ADW not Firearm GBI likely,” of which he was convicted and sentenced to 24 months probation and 45 days in jail.
2. On January 1, 1992, the applicant was arrested under the name of [REDACTED] by the LAPD and charged with felony robbery. The FBI report is unclear as to the disposition of that charge in court.
3. On October 1, 2004, the applicant was arrested under the name of [REDACTED] by an agency identified as “DPS – ST PAT – Dist. 2500 Golden Valley” in Minnesota and charged

with "4th degree driving under the influence [DUI]." The FBI report contains no information about the court disposition of that charge.

On July 29, 2006, the director sent the applicant a notice of intent to deny, requesting that evidence of the final court dispositions of his three arrests be submitted within 33 days. When no response was received, the director denied the application on September 14, 2006, on the ground that the applicant, by not providing the final court dispositions of his arrests, had failed to establish his eligibility for TPS.

The applicant filed a timely motion to reconsider, together with a fee waiver request, with the CSC. The fee waiver request was denied by the CSC, which returned the applicant's package with instructions to resubmit it with the required filing fee for an appeal. The applicant did so in a timely manner, and the CSC has forwarded the appeal to the AAO.

Counsel asserts that neither she nor the applicant received the notice of intent to deny, which was the reason no response was submitted before the director's decision. The record shows, however, that the notice was sent to the applicant, with a copy to counsel, at the last known addresses they had provided to the CSC.

In support of the appeal the applicant has submitted the following documentation with respect to his arrests:

1. A Los Angeles Police Department "Response to Request for Police Report or Arrest Report," dated January 28, 2000, stating that the LAPD had found no arrest reports for [REDACTED] [REDACTED] for the year 1991.
2. a) An Order of the Court, issued on September 9, 2005, by the District Court in Anoka County, Minnesota, stating that the applicant was convicted on April 5, 2005, of the misdemeanor crime (committed on October 1, 2004) of 4th degree DUI with a blood alcohol content over 0.10 %, vacating the previously granted stay of imposition of sentence, and ordering the applicant to appear in court on October 12, 2005, and
b) A Warrant issued by the District Court in Anoka County, Minnesota, dated October 12, 2005, stating that the applicant failed to appear at court for his probation violation hearing on that date and revoking the stay of sentence and/or probation previously granted.

The documentation from the District Court in Anoka County, Minnesota, establishes that the applicant was convicted of a misdemeanor in that state. As for the LAPD report, that document is not a final court disposition, as the applicant was requested to submit. Moreover, it states only that no arrest reports for the applicant were found for the year 1991. It does not address the year 1992, which was the year indicated in the FBI report of the applicant's second arrest by the LAPD. In addition, the LAPD report evidently did not search for any arrest reports in the names of [REDACTED] and [REDACTED] which were the aliases apparently used by the applicant in 1991 and 1992.

Thus, the record confirms that the applicant has been convicted of one misdemeanor in Minnesota, and the applicant has submitted no probative evidence to refute the information in the FBI report that he was convicted of

at least one other crime in California. The applicant has submitted no final court dispositions of the charges arising from his first arrest in California, or of his subsequent felony robbery charge in California.

Therefore, the applicant is ineligible for TPS, under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a), because he has failed to establish that he has not been convicted of a felony or two or more misdemeanors committed in the United States. Furthermore, the applicant may also be inadmissible to the United States under section 212(a)(2) of the Act. The director's decision to deny the application for TPS will therefore 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 that burden.

ORDER: The appeal is dismissed.