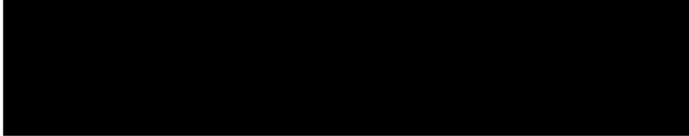


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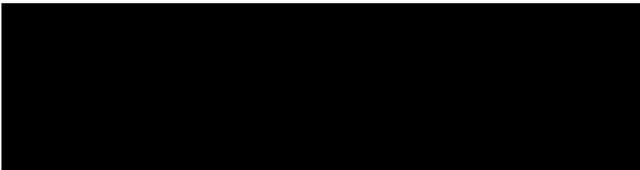
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FILE: [REDACTED] OFFICE: TEXAS SERVICE CENTER DATE: MAR 02 2007
[SRC 02 203 54473]

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:



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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion to reopen will be granted and 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 that the applicant had been convicted of two or more misdemeanors.

A subsequent appeal from the director's decision was dismissed on March 7, 2005, after the Director of the AAO also concluded that the applicant had been convicted of two or more misdemeanors. On motion to reopen, the applicant reasserted his claim of eligibility for TPS and submitted evidence in relation to his criminal convictions.

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:

- (1) On April 9, 1998, in the Circuit/County Court, Broward County, Florida, Case No. [REDACTED] (arrest date September 17, 1997), the applicant was convicted of soliciting prostitution, a misdemeanor. He was ordered to pay \$140.00 in fines.
- (2) On July 7, 1998, in Dade County, Florida, Case No. [REDACTED] (arrest date September 4, 1997), the applicant was arrested for resisting an officer without violence, a misdemeanor. It appears from the FBI printout that he was convicted and was sentenced to time served.
- (3) The records of the Broward County 17th Judicial Circuit of Florida shows that the applicant was arrested for a traffic infraction under Case No. [REDACTED] and that a court disposition was entered.

On appeal, counsel states that the applicant has been arrested and convicted of a misdemeanor only once in his life. Counsel further states that the applicant concedes the April 1998 conviction for soliciting prostitution. Counsel also states that another individual was convicted of the July 1998 charge of resisting an officer who

happens to have the same date of birth as the applicant. Counsel continues by stating that the applicant denies being involved in any matter involving a traffic infraction conviction.

Contrary to counsel's assertions, the offenses in numbers 2 and 3 above were not discovered through a date of birth search. Rather, they were recorded on the applicant's FBI fingerprint report. The applicant bears the burden of proof, and there has been no credible evidence submitted to show that someone other than the applicant was arrested and convicted of the above named charges.

The applicant is ineligible for TPS due to his record of two or more misdemeanor convictions as detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

It is noted that the applicant has failed to submit sufficient evidence to establish continuous residence and continuous physical presence in the United States during the requisite time periods as described in 8 C.F.R. §§ 244.2(b) and (c).

It is also noted that the record of proceeding contains an outstanding Warrant of Removal/Deportation, Form I-205, issued on September 22, 1998, and that the applicant failed to appear at the Miami district office on April 26, 1999, for his enforced departure.

The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial. 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.