



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

M

[REDACTED]

FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER DATE: MAY 21 2007

[WAC 01 202 51223]

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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the 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 director determined that the applicant was ineligible for TPS because he had been convicted of a felony offense committed in the United States. The director, therefore, denied the application.

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.

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 Federal Bureau of Investigation (FBI) Identification Record, contained in the record of proceeding, reflects that the applicant was arrested in Fresno, California, on November 11, 2001, and charged with one count of inflicting corporal injury on a spouse or cohabitant; one count of threatening a crime; and, one count of damage to power lines. Citizenship and Immigration Services (CIS) has obtained information indicating that the applicant was convicted of inflicting corporal injury on a spouse or cohabitant, a felony, and sentenced to 36 months' probation and 90 days in jail.

Based on information contained in the record of proceeding, the director determined that the applicant was ineligible for TPS because he was convicted of a felony.

Pursuant to 8 C.F.R. § 103.2(a)(16)(i), if the decision will be adverse to the applicant, and is based on derogatory information considered by CIS and of which the applicant is unaware, he shall be advised of this fact and offered an opportunity to rebut the information and present information in his own behalf before the decision is rendered.

The record of proceeding, in this case, does not contain the court's charging documents and final dispositions for the applicant's arrests to establish that he was in fact convicted of the crimes listed in the FBI report. Nor is there evidence in the record that the applicant was requested to submit the court documents of all of his arrests.

The case will, therefore, be remanded so that the director may accord the applicant an opportunity to submit arrest reports and the court's final dispositions of all his arrests. The director shall enter a new decision.

It is noted that the applicant's prior asylum application was denied on April 23, 1996, and he was referred for a deportation hearing before an Immigration Judge. On August 16, 2000, the Immigration Judge denied the applicant's applications for asylum and for withholding of removal. The Immigration Judge granted the applicant the privilege of voluntary departure within 60 days of the order, with an alternate order of deportation if the applicant failed to depart in compliance with the grant of voluntary departure.

The applicant filed an appeal with the Board of Immigration Appeals (BIA) on September 8, 2000. On June 26, 2001, the BIA administratively closed the proceeding to allow the applicant the opportunity to apply for TPS.

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 director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.