

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

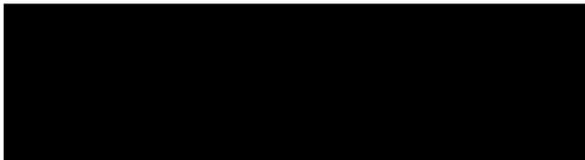
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

M1

PUBLIC COPY

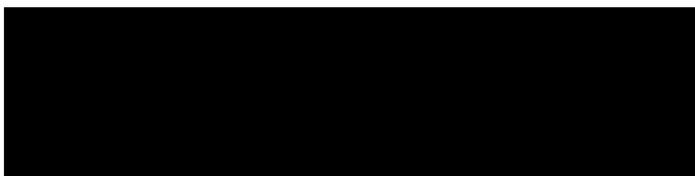


FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: OCT 24 2007
[EAC 02 003 53410]

IN RE: Applicant: [REDACTED]

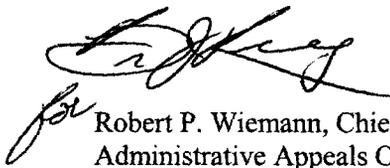
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded to the director for further action.

The applicant claims to be 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 the applicant had been convicted of two misdemeanors committed in the United States.

On appeal, counsel 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 record reveals the following offenses:

- (1) On September 17, 1990, in the District Court of Southern Essex, Lynn, Massachusetts, Docket No. [REDACTED] the applicant was indicted for Count 1, trespassing, Park Rule #12; and Count 2, consuming alcohol beverage, Park Rule #13. On January 7, 1992, the applicant was convicted of both Counts 1 and 2. He was ordered to pay \$80 in fines and costs as to Count 1, and ordered to pay \$50 in fines and costs as to Count 2.
- (2) On April 24, 1992, in Lynn County District Court, Massachusetts, Case No. [REDACTED] the applicant was indicted for Count 1, attempt to commit a crime; Count 2, threatening-

bodily harm domestic abuse; and Count 3, malicious destruction of property. The case was dismissed on July 23, 1992.

- (3) On June 1, 1992, in Lynn District Court, Massachusetts, Case No. [REDACTED] the applicant was indicted for Count 1, assault with a dangerous weapon-knife; and Count 2, carrying a dangerous weapon-knife. The case was dismissed on July 23, 1992.
- (4) On June 27, 1994, in Lynn District Court, Massachusetts, Case No. [REDACTED] the applicant was indicted for "disorderly person." The disposition of this case shows, "CC [REDACTED]" The final court disposition of this arrest is not clear in the record.
- (5) On August 16, 1994, in Lynn District Court, Massachusetts, Case No. [REDACTED] the applicant was indicted for carrying a dangerous weapon-knife. The disposition of this case shows, "[REDACTED]" The final court disposition of this arrest is not clear in the record.
- (6) On September 16, 1997, in Lynn District Court, Massachusetts, Case No. [REDACTED] the applicant was indicted for assault with a dangerous weapon-carpet knife. The case was dismissed on November 7, 1997.

On appeal, counsel asserts that the offenses for which the applicant was found guilty (No. 1 above) were rules and regulations relating to parks and playgrounds in the City of Lynn, Massachusetts, and that such violations, pursuant to Massachusetts General Laws Annotated, Chapter 45 § 24, are punishable by fines of not more than two hundred dollars. She contends that, because these offenses are not punishable by imprisonment, they cannot be considered as felonies or misdemeanors as defined under 8 C.F.R. § 244.1.

Counsel is correct in her assertions. The applicant's convictions of the offenses detailed in No. 1 above are not misdemeanors as defined under 8 C.F.R. § 244.1. Therefore, this finding of the director will be withdrawn.

However, the applicant furnished a printout or listing of his arrests and/or convictions obtained from the "Commonwealth of Massachusetts, Criminal History Systems Board" for the offenses listed as Nos. 2, 3, 4, 5, and 6 above, rather than from the court where the hearings took place. The dispositions from the court are necessary to establish that Nos. 2, 3, and 6 were, in fact, dismissed, and to determine the outcome and the identity of the codes listed as dispositions of Nos. 4 and 5 above. The record of proceeding contains no evidence that the applicant was provided the opportunity to submit the final court dispositions 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 of his arrests from the court where the hearing(s) took place.

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.