

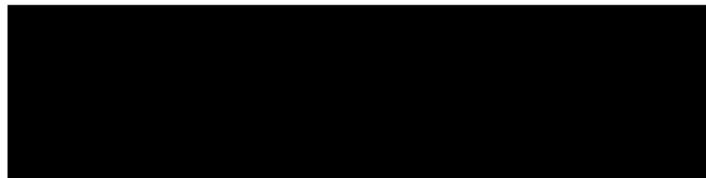
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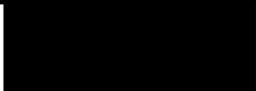
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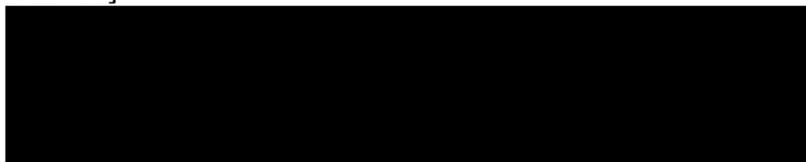
OFFICE: CALIFORNIA SERVICE CENTER

DATE FEB 20 2008

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IN RE:

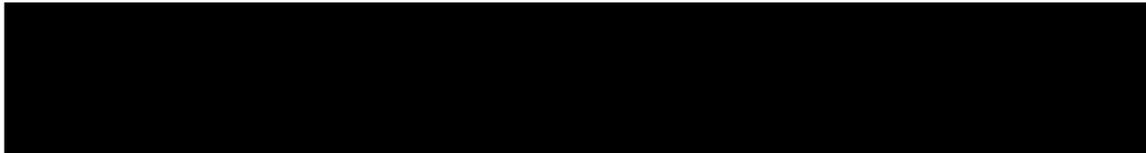
Applicant:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The case will be reopened and the appeal will again 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.

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 designated by the Attorney General 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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the

expiration or termination of conditions described in paragraph (f)(2) of this section.

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. 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 director denied the application on December 17, 2003, after determining that the applicant had failed to submit requested court documentation relating to his criminal record.

The AAO reviewed the record of proceeding and evidence furnished on appeal, and noted that the applicant furnished court documents indicating that on March 12, 1997, in Fresno, California, the applicant was arrested and charged with (1) one count of carrying a concealed firearm, § 12025(a) PC, and (2) one count of carrying a loaded firearm in a public place, § 12031(a) PC. On February 5, 2003, in the Superior Court of California, County of Fresno, Central Division, the complaint was amended by oral motion to Count 1, § 12021(a) PC [possession of a firearm]; and Count 2, § 12031(a) PC [carrying a loaded firearm in a public place]. The applicant entered a plea of guilty to the amended Count 1, 12021(a) PC. Count 2 was dismissed.

On motion, counsel asserts that the applicant’s conviction is not a felony, but a misdemeanor; therefore, the appeal decision was an error based on wrong conclusion.

California Penal Code § 12021 states, in part:

(a)(1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6,¹ or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

¹ Violent use of a firearm.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417² and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

The record indicates that the original charges for carrying a concealed firearm, § 12025(a) PC, and carrying a loaded firearm in a public place, § 12031(a) PC, are both felony offenses. What is also clear from the court records is that the applicant gave police a false name when he was arrested. The applicant was initially arrested on March 12, 1997, but failed to appear before the court and a warrant was issued for his arrest. Not until six years later, in 2003, did the applicant hire an attorney to appear on his behalf in court. The attorney then arranged a plea bargain for the charges listed above. While the court amended the charges as to Count 1 to § 12021(a) PC, as noted above, this offense is also a felony. The charge is listed as a felony under the California Penal Code.

As noted above, the applicant was convicted of violating § 12021(a) PC, a felony offense; therefore, the applicant remains ineligible for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Accordingly, the decision of the AAO dated May 27, 2005, dismissing the appeal, will be affirmed.

The AAO will note for the record that the applicant's testimony and submitted evidence lacks any credibility. The applicant was arrested and charged with two particularly serious crimes in 1997, however, evaded justice for six years through the use of an alias. The applicant subsequently filed for TPS and failed to reveal his criminal history. When asked by the director to submit evidence with regard to the charges on his record the applicant initially submitted a document indicating that he had no criminal history. Only after the director denied the application did the applicant admit that he had failed to search his criminal history based on his alias. In addition, the applicant claimed on his application for TPS that he entered the United States on March 6, 2000. However, an FBI fingerprint analysis revealed that the applicant was arrested and charged with two particularly serious crimes in 1997, in contradiction of his claimed date of entry. Nonetheless the applicant proceeded to submit residence and presence documentation which contradicted his own claimed date of entry to the United States.

An application that includes numerous errors and discrepancies, where the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, will raise serious concerns about the veracity of the applicant's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible. The documentation submitted by the applicant is categorically rejected, and the application will be denied on the additional basis that the applicant has failed to establish prima facie eligibility for TPS under section 244.2(b) and (c). An applicant may not make material changes to an application in an effort to make a deficient application conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The application does not contain sufficient credible evidence to establish the applicant was continuously resident and continuously physically present during the required periods pursuant to 8 C.F.R. 244.2(b) and (c), and the application will thus be denied for this additional reason.

² Brandishing or using deadly weapon during quarrel.

The application will be denied for the above stated 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.