

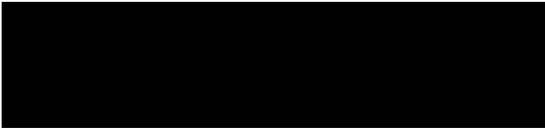
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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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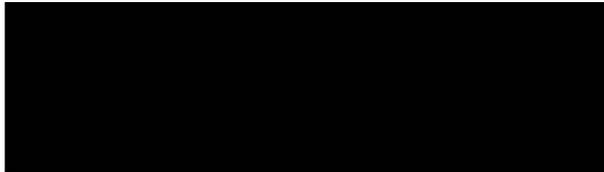
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OFFICE: VERMONT SERVICE CENTER

DATE JAN 22 2008

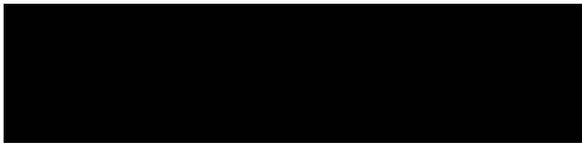
IN RE:

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 "R. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

DISCUSSION: The application was originally denied by the Director, Vermont Service Center. A subsequent appeal was remanded to the director by the Administrative Appeals Office (AAO). The director again denied the application and certified his decision to the AAO for review. The director's decision will be affirmed.

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 originally denied the application on March 27, 2002, after determining that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on his drug conviction, and also because he had been convicted of a felony offense.

The AAO reviewed the record of proceeding and noted that the director based his decision on the Federal Bureau of Investigation (FBI) fingerprint results report, and that the record is devoid of the court's charging documents and final dispositions of the applicant's arrests to establish that he was, in fact, convicted of the crimes listed in the FBI report; nor was there evidence that the applicant had been requested to submit the final court dispositions of all of his arrests. Therefore, on February 11, 2004, the AAO remanded the case to the director so that the applicant could be accorded the opportunity to submit arrest reports and the court's final dispositions of all of his arrests.

On February 22, 2005, the director requested that the applicant submit the final court dispositions of all of his arrests, including arrests listed on the FBI report. Counsel responded on March 24, 2005, by submitting court documents relating to the applicant's arrests. On June 14, 2006, the director again denied the application, after determining that the applicant had been convicted of felony offenses committed in the United States, and certified his decision to the AAO for review.

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following offenses:

- (1) **November 23, 1996**, in the Superior Court of the District of Columbia, Washington, DC, Case No. \_\_\_\_\_ (arrest date November 22, 1996), the applicant (name used: \_\_\_\_\_) was indicted for Count A, National Firearms Act; Count B, Carrying a Pistol Without License-Outside Home; Count C, Carrying a Pistol Without License-Outside; Count D, Unregistered Firearms; and Count E, Unlawful Possession of Ammunition. On April 29, 1999, the applicant was convicted of Counts C (a felony) and D (a misdemeanor). He was sentenced to "not less than one (1) year not more than 3-three years, Execution of Sentence Suspended" as to Count C; and sentenced to "one (1) year Execution of Sentence Suspended" as to Count D; and he was placed on probation for a period of one year on each Count C and D, to run concurrent to each other. Count E was dismissed. The final disposition as to Counts A and B is not reflected on the record.
- (2) On July 25, 1997, the applicant was arrested for Count A, Bail Reform Act, a felony; and Count B, Bail Reform Act, a felony. On November 24, 1998, the applicant was indicted for Count A, and he was "HELD FOR S.C.G.J." The court's final disposition as to Count A is not reflected on the record. Count B was dismissed on April 29, 1999.
- (3) The FBI report indicates that on October 17, 1997, in Mineola, New York, the applicant (name used: \_\_\_\_\_) was arrested and charged with (1) criminal possession of a controlled substance in the 3<sup>rd</sup> degree, and (2) criminal possession of a controlled substance in the 4<sup>th</sup> degree. The FBI report further shows that on October 17, 1997, the applicant was convicted of attempted criminal possession of a controlled substance, a felony. On February 27, 1998, the applicant was "arrested or received" at the Correction Facility East Meadow, New York, to serve a 7-month sentence for this offense. The applicant failed to submit the actual final court disposition of this arrest.
- (4) On May 24, 2000, in the Superior Court of the District of Columbia, Washington, DC, Case No. \_\_\_\_\_ (arrest date May 2, 2000), the applicant (name used: \_\_\_\_\_) was indicted for Count A, unauthorized use of a motor vehicle; Count B, receiving stolen goods; and Count C, unauthorized use of a motor vehicle. On March 25, 2002, Counts B and C were dismissed; however, the final disposition as to Count A is not reflected on the record.
- (5) The FBI report indicates that on May 3, 2000, in Washington, DC, the applicant (name used: \_\_\_\_\_) was arrested for unauthorized use of a vehicle. It is not clear in the record whether this arrest relates to No. 4 above as the final court disposition of this arrest is not contained in the record.

The applicant is ineligible for TPS due to his felony conviction, detailed in No. 1 above, and because he failed to provide the final court disposition of his arrests detailed in Nos. 3, 4, and 5 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The decision of the director to deny the application will 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 this burden.

**ORDER:** The director's decision is affirmed.