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FILE:



OFFICE: CALIFORNIA SERVICE CENTER DATE: **MAR 05 2008**

[WAC 05 224 78923]

[WAC 06264 50249, motion]

INRE:

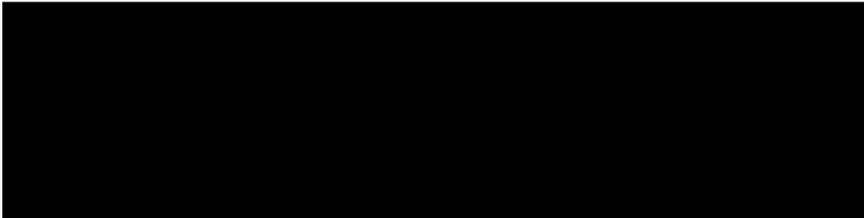
Applicant:



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 California Service Center. Any further inquiry must be made to that office.

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Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. A motion to reopen, filed by the applicant, was granted by the director and he again denied the application. The applicant appealed the director's decision on the motion. This matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The applicant is a 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 record reveals that the applicant filed a TPS application during the initial registration period on August 6, 2001, under Citizenship and Immigration Services (CIS) receipt number SRC 01 257 56465. The Director, Texas Service Center, denied that application for abandonment on April 8, 2003, because the applicant failed to respond to a request for evidence to establish her nationality and identity, and to establish her continuous physical presence in the United States during the qualifying period. There is nothing in the record to indicate that the applicant filed a motion to reopen the director's decision. On May 12, 2005, the applicant filed a subsequent TPS application. The Director, California Service Center, denied this application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration. On August 31, 2006, the applicant filed an appeal from the denial decision. On December 8, 2006, the Director, California Service Center approved the appeal, and on December 14, 2006, again requested the applicant to submit evidence to establish her eligibility for TPS.

On February 6, 2007, the director subsequently denied the re-registration application again because the applicant failed to submit requested court documentation relating to her criminal record.

On appeal, the applicant provides the requested court disposition.

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.
8 C.F.R. § 244.1.

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.

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.

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.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The record reveals the following offenses:

- (1) On July 2144, 2000, the applicant was arrested by the Lawrenceville, Georgia Police Department for "Theft by Shoplifting."

Pursuant to a letter dated December 14, 2006, the applicant was requested to submit the final court disposition for the charge detailed above. The applicant failed to respond to the notice.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on February 6,2007.

On appeal, counsel for the applicant states that the applicant did respond to the request for evidence. The applicant also submits evidence in an attempt to establish her continuous residence and continuous physical presence in the United States during the qualifying period. In addition, the applicant submits the requested court disposition

The court disposition indicates that the applicant was not prosecuted for "Shoplifting," but was placed in and successfully completed a diversion program.

The court disposition submitted reflects that the applicant was not prosecuted for the arrest. Therefore, the applicant has not been "convicted" of this offense for immigration purposes. Consequently, the applicant is eligible for TPS.

Therefore, the director's decision will be withdrawn and the application will be approved.



ORDER: The appeal is sustained.