

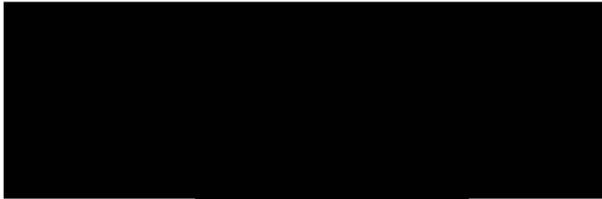
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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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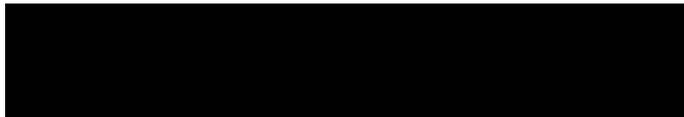
FILE: [REDACTED]  
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OFFICE: VERMONT SERVICE CENTER

DATE:

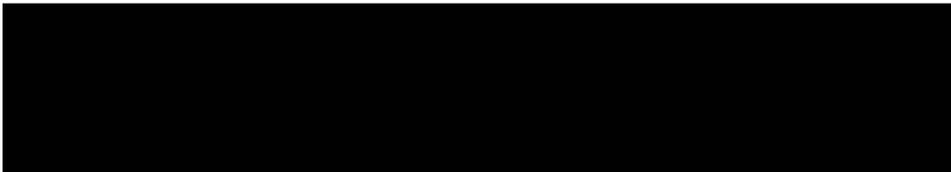
**MAR 21 2008**

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 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, Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. The case will be remanded for further consideration and 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 denied the application because he found the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserts the applicant has only one misdemeanor conviction, and that Citizenship and Immigration Services (CIS) failed to prove the applicant was not eligible for TPS.

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).

"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.

The State of California Department of Justice and FBI printouts dated September 29, 2004, and November 21, 2006, respectively reveal that on September 13, 1997, the applicant was arrested under the name [REDACTED] by the Arcadia Police Department in California for conspiracy to commit grand theft, a felony. It appears from each printout that on September 15, 1997, the applicant was convicted in the Monrovia Superior Court of theft, a violation of section 484(a) PC and receiving known stolen property, a violation of section 496(a) PC, both misdemeanors. Case no. [REDACTED]

Based on these printouts, the director determined that the applicant had been convicted of two misdemeanors.

The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

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 above. Nor is there evidence in the record that the applicant was requested 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 the court's final dispositions of all his arrests. The director shall enter a new decision.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

Finally, it is noted for the record that on January 3, 2005, an immigration judge (IJ) issued an order granting the applicant voluntary departure in lieu of removal on or before February 2, 2005. On January 5, 2005, the applicant appealed the IJ's decision to the Board of Immigration Appeals (BIA). On December 28, 2005, the BIA dismissed the appeal and granted the alien voluntary departure within 30 days from the date of the order. The removal order was issued subsequent to the denial of the applicant's initial TPS application filed under CIS receipt number SRCOI20455421.<sup>1</sup> No satisfactory evidence has been introduced into the record to establish the applicant made a timely departure.

**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.

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<sup>1</sup> On December 16, 2003, the TPS application was denied due to abandonment as the applicant failed to submit the requested court disposition regarding her arrest.