



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: MAY 01 2008

[AAO 08 099 50019, *appeal*]  
[SRC 01 203 56560]

INRE:

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, and the case will be remanded to the Director, Vermont Service Center, 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 applicant filed an initial Form 1-821, Application for Temporary Protected Status, during the initial registration period. The Director, Texas Service Center, denied that application on April 14, 2004, after determining that the applicant had failed to respond to a request for evidence.

It is noted that the applicant filed another Form 1-821 under receipt number WAC 05 12681518 on February 3, 2005, and indicated that he was re-registering for TPS. The Director, California Service Center (CSC), denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The CSC Director rejected a late appeal from the re-registration denial on November 25, 2005.

The initial TPS application was subsequently reopened and again denied by the District Director, Houston, Texas, on June 23, 2006. The district director found the applicant inadmissible under section 212(a)(6)(C) due to his fraud and misrepresentation in failing to disclose his September 18, 2002, arrest for burglary on his TPS application.

On appeal from the district director's decision, counsel states:

[REDACTED]'s application for Temporary Protected Status was denied on the basis that he made a misrepresentation when he submitted his application. This motion argues that the misrepresentation was not "material" and should not be a basis for denial. Alternately, an I-601 waiver is also being filed with this application in order that the misrepresentation may be waived.

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible. Section 212(a)(6)(C)

The record reveals that when the applicant was arrested on September 18, 2002, he was still a juvenile and that his case was adjudicated in juvenile court. Juvenile court proceedings in the United States' courts are civil rather than criminal in nature. The Board of Immigration Appeals has affirmed the well-settled principle that an act of juvenile delinquency is not a crime in the United States and, therefore, not a conviction for legalization purposes. *In re Miguel DEVISON-Charles*, 22 I&N Dec. 1362 (2001). Therefore, this arrest can not be considered a "material fact" since its disclosure would not have affected the outcome of his application. For this reason, the previous decision in this case is withdrawn and the matter is remanded to the Director, Vermont Service Center, for a new decision.

It is noted that the applicant was deported from the United States to El Salvador from Houston, Texas, on September 21, 2007.

The case is remanded to the Director, Vermont Service Center, for 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.

**ORDER:** The initial application is reopened, the district director's decision is withdrawn, and the application is remanded for a new decision. The re-registration application is remanded for further action consistent with the director's new decision on the initial application.