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U.S. Citizenship
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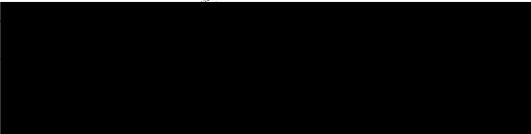
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 03 2004
[WAC 01 196 53790]

IN RE: Applicant: [REDACTED]
aka [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:



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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will 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.

The director determined that the applicant had failed to provide police clearances from every city where she had lived in the United States, and the certified final court disposition of each arrest, although the applicant had requested additional time in which to obtain the documents. The director, therefore, denied the application.

On appeal, counsel asserts that the circumstances that led the applicant to request additional time to comply with Citizenship and Immigration Services request were beyond her control. He subsequently submits additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General, now, the Secretary of the Department of Homeland Security (the Secretary), finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

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 felony or misdemeanor.

Section 212(a)(2) of the Act, 8 U.S.C. § 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

(A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of ...

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or...

The record reflects the following:

1. On August 23, 1995, in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date August 5, 1995), the applicant was indicted for Count 1, driving under the influence of alcohol/drugs with bodily injury, 23153(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; and Count 3, unlicensed driver, 12500(a) VC, a misdemeanor. On April 18, 2003, the court dismissed the case and terminated proceedings.
2. The Federal Bureau of Investigation (FBI) fingerprint results report shows that on August 5, 1995, in Norwalk, California, the applicant was arrested and charged with Count 1, driving under the influence of alcohol/drugs causing bodily injury, a felony; and Count 2, perjury, a felony. It is not clear in the record whether this case relates to No. 1 above, nor is there evidence that the applicant was tried in court for

these offenses or that the charges were amended by the court, as the applicant failed to submit the complete court documents, including the arrest reports and charging documents/indictment reports. Furthermore, the applicant, in her March 25, 2003, letter of request for additional time in which to submit court documents, stated that she was "also charged with welfare fraud in 1995."

The offenses of fraud and perjury involve moral turpitude and convictions of these crimes may render the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. However, the court documents relating to these offenses are not contained in the record. Nor did the applicant submit a police clearance from every city where she has lived in the United States.

The applicant is, therefore, ineligible for TPS based on her failure to comply with the director's request to submit the certified court dispositions of all her arrests and the police clearance. 8 C.F.R. § 244.9(a). Accordingly, the director's decision to deny the TPS application will be affirmed.

The burden of proof is upon the applicant to establish that he 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.