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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

M1

FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAY 17 2005

[WAC 02 207 52150]

IN RE:

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:

Self-represented

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.

Robert P. Wiemann for

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 case will be remanded to the director for further 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 that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant states that he did not understand what was requested; however, he is now submitting the requested court documents.

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.

The record reveals that on August 19, 1991, in Los Angeles County, California, the applicant, under the name of [REDACTED] was arrested and charged with Count 1, burglary 459 PC, a felony; and Count 2, false identification to a peace officer, 148.9 PC, a misdemeanor. On July 23, 1992, in the Superior Court of California, County of Los Angeles, Juvenile Court, the applicant was adjudged and declared a ward of the Juvenile Court and released to his parents. The case was dismissed on February 16, 1993.

The record indicates that the applicant was born on March 18, 1975. He was 16 years of age when he was tried in Juvenile Court for the charges listed above. The Board, in *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981), held that acts of juvenile delinquency¹ are not crimes in the United States and that an adjudication of delinquency is not a conviction for a crime within the meaning of the Immigration and Nationality Act. The Board further held that since an act of juvenile delinquency is not a crime for the purposes of immigration laws, then such conduct cannot serve as the basis of a finding of inadmissibility.

¹ Juvenile delinquency is defined by the Federal Juvenile Delinquency Act, 18 U.S.C. 5031, as "the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult."

Accordingly, the applicant's juvenile record cannot act as a bar to his eligibility for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Therefore, the applicant has overcome the basis for the director's denial.

However, the records of the National Crime Information Center (NCIC) indicate that a protection or restraining order was issued against the applicant in Los Angeles, California, on January 28, 2005. While such an order may not necessarily lead to a conviction, the case will be remanded so that the director may accord the applicant an opportunity to submit arrest reports, if any, and final court dispositions, if the applicant was in fact arrested and/or convicted of any offense in relation to the restraining order.

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 director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.