

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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FILE:

[REDACTED]
[WAC 01 172 55623]

Office: CALIFORNIA SERVICE CENTER

Date: JUN 05 2006

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:

[REDACTED]

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.

Cindyn. Homey
Robert P. Wiemann, Chief
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 claims to be 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 the applicant had been convicted of two misdemeanors committed in the United States.

On appeal, counsel submits a statement and additional evidence. While counsel indicates that he needs 90 days to submit a brief and/or evidence, to date, no additional statement or evidence has been provided.

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 felony or misdemeanor.

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.

The Federal Bureau of Investigation (FBI) fingerprint results report and a memorandum from the California Service Center, contained in the record of proceeding, reflect the following:

- (1) The FBI report shows that the applicant was arrested on February 16, 1999, in Sacramento, California, for 'USE/ETC FALSE INFO TO DMV.' The applicant submits, on appeal, the court disposition of this arrest indicating that on March 9, 1999, in the Municipal Court of Southeast, H.P. Judicial District, County of Los Angeles, California, Case No. [REDACTED] the applicant was indicted for Count 1, "FALSE STATEMENT TO DMV/CHP," 20 VC, a misdemeanor; and Count 2, "DSPLY/POS-CANCLD/RVKD/ETC LICN," 14610(a)(1) VC, a misdemeanor. On March 15, 1999, the applicant was convicted of Count 1. He was placed on

probation for a period of 3 years, ordered to spend 10 days in the county jail, and pay \$100 in restitution fine. Count 2 was dismissed.

- (2) A memorandum dated February 1, 2003, from the California Service Center indicates that the applicant was convicted on March 3, 2002, of "CRT FIND PLEA KNOWLEDGE & INTELLIGINT [sic] & VOLUNTARY CONVICTION CERT BY THE CLERK OF THE COURT."

Based on information contained in the FBI report and the California Service Center memorandum, the director determined that the applicant was ineligible for TPS because he was convicted of two misdemeanor offenses.

On appeal, counsel asserts that the applicant denies any conviction on March 3, 2002. He submits the final court disposition of the applicant's arrest detailed in No. (1) above.

The record of proceeding, however, is devoid of the complete, actual final court dispositions of the applicant's arrests listed in No. (2) above. Nor is there evidence in the record that the applicant was provided the opportunity to submit the court dispositions of all of his arrests. Further, an explanation of these charges and the exact violation that occurred should be supplemented in the record, as the exact offense is not discernible from the information provided.

The case will, therefore, be remanded so that the director may accord the applicant an opportunity to submit arrest reports and the court's final dispositions of all of his arrests.

It is noted that the evidence contained in the record of proceeding is insufficient to establish the applicant's qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). The applicant also should be provided the opportunity to furnish additional evidence of the requisite physical presence and residence in the United States.

Additionally, it is noted that although the record contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by a photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1).

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.