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U.S. Citizenship
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FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER DATE: JUL 28 2006

[WAC 01 171 52777]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 (AAO) on appeal. The matter will be remanded to the director 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 Federal Bureau of Investigation (FBI) fingerprint report reveals that the applicant was arrested in Los Angeles, California, on August 7, 1997, and charged with "FORGE OFFICIAL SEAL," a misdemeanor. The fingerprint report further indicates that the applicant was convicted in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, State of California, of "USE ETC. FALSE INFO ETC. ON DOC TO DMV CHP."

The director determined that the applicant was ineligible for TPS under 8 C.F.R. § 244.3(b) because he is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act as an alien who sought to procure admission to the United States or an immigration benefit through fraud or the willful misrepresentation of a material fact. The director denied the application because the applicant had not filed Form I-601, Application for Waiver of Grounds of Excludability, stating, "[t]he applicant may submit a Form I-601, Application for Waiver of Grounds of Excludability with fee (\$170.00), if the applicant believes he or she is eligible for such waiver."

On appeal, the applicant states that he does not believe he is ineligible for TPS because of his conviction on the charge detailed above because he has only been convicted of one misdemeanor. He further stated he purchased the identification he presented to the California Highway Patrol from an office in Los Angeles using his own name and pictures, and was unaware that the identification document he received was fraudulent. Finally, the applicant states that he completed the sentence imposed by the court and has since graduated from the Los Angeles Community College with an associate's degree in psychology and is currently pursuing a bachelor's degree at California State College in Los Angeles, California. The applicant submits the following:

1. a copy of the final court disposition of the offense detailed above, confirming that the applicant was arrested on August 7, 1997, in Los Angeles, California and charged with forging an official seal in violation of section 472 PC, a misdemeanor, and false statement to the California Highway Patrol in violation of section 20 VC, and that the applicant was convicted in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, State of California, of count 1, forging an official seal, in violation of section 472 PC, a misdemeanor (Case No. [REDACTED])
2. a document dated August 26, 2004, from the Superior Court of California, County of Los Angeles, stating that no criminal record was found using a "by name only" search under the name [REDACTED] late of birth June 27, 1977;
3. a photocopy of a diploma from Los Angeles City College, Los Angeles, California, stated June 9, 2003, certifying that the applicant completed a course of study in human services;

4. a letter dated August 23, 2004, from [REDACTED] [REDACTED] stating that the applicant has been employed by her agency for the last 18 months as a behavior therapist working with severe special needs students; and,
5. a letter dated August 26, 2004, from [REDACTED] Access Center Program Manager, Los Angeles, California, stating that in the fall of the year 2000, the applicant completed fieldwork studies at the Hollywood Access Center location as part of a college internship through his studies at Los Angeles City College.

Subsequent to the filing of his appeal, the applicant has filed a Form I-601, Application for Waiver of Grounds of Excludability, with the Los Angeles District Office.

There is no indication in the FBI fingerprint report or the court disposition document that the applicant was attempting to obtain an immigration benefit through use of a fraudulent identification document. Additionally, since the applicant has only been convicted of one misdemeanor, he is not ineligible for TPS based on a record of two or more misdemeanor convictions. Therefore, the director's decision will be withdrawn. The case will be remanded for a new decision. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

It is noted that the record of proceeding, as it is presently constituted, does not contain sufficient evidence to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

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.