

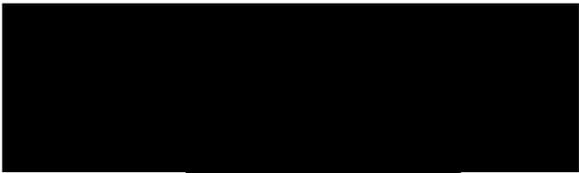
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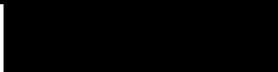


**U.S. Citizenship
and Immigration
Services**

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

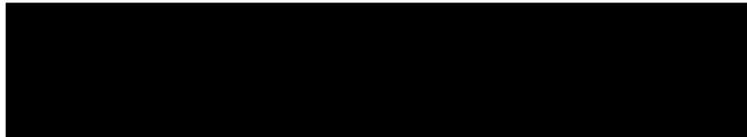
DATE: JUN 12 2007

[WAC 01 206 53376]

[WAC 06 150 51910, appeal]

IN RE:

Applicant:



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, 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 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 denied the application because the applicant had failed to submit the final court disposition of his arrest.

On appeal, the applicant submits a statement.

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

- (a) Is a national of a 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 Temporary Protected Status 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.

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The record reveals the following offenses:

- (1) On October 20, 1992, in the Municipal Court of Metropolitan Courthouse Judicial, County of Los Angeles, California, [REDACTED] (arrest date September 16, 1992), the applicant (name used: [REDACTED]) was indicted for Count 1, sell/transport a controlled substance (heroin), 11352(a) Health & Safety Code (H&S), a felony; and Count 2, sell/transport a controlled substance (heroin), 11352(a) H&S, a felony. The applicant was not present in court and not represented by counsel at his arraignments on October 21, 1992, on October 28, 1992, and on November 13, 1992. Therefore, the court issued a warrant for the applicant's arrest. The final disposition of this arrest is not included in the record of proceeding.
- (2) On November 24, 1998, in the Municipal Court of East Los Angeles Courthouse Judicial, County of Los Angeles, California, [REDACTED] (arrest date November 22, 1998), the applicant (name used: [REDACTED]) was indicted for possession of a narcotic controlled substance (cocaine), 11350(a) H&S, a felony. On November 24, 1998, the

applicant entered a plea of not guilty to the offense, the court “accepts plea unfavorable or report received,” he was referred to the probation department for evaluation as to deferred entry of judgment, and the applicant was released on his own recognizance. On December 15, 1998, the case was called for deferred entry of judgment. The applicant was not present in court; therefore, a bench warrant was issued for his arrest.

On appeal, the applicant asserts that it was impossible for him to get the final court disposition because he never saw the judge, and that at the time of his arrest he was not guilty and he was released. He further asserts that “with help of other person I saw the judge on April 7, 2006 and told me that [sic] will review my file and will give the decision on approximately May 20, 2006. Accord with preliminary court, I am not guilty because I appeared before the judge.” Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, although the applicant asserts that he saw the judge on April 7, 2006, and that he will send the court disposition as soon as it is received from the court, to date, no additional evidence has been provided. Additionally, it is not clear from the applicant’s statement whether he was referring to the case listed as No. (1) or No. (2) above. A conviction of possession and sell/transport (trafficking) controlled substances may render the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) and/or section 212(a)(2)(C) of the Act. However, the applicant has failed to submit the final court dispositions of his arrests detailed in Nos. (1) and (2) above.

The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

An alien applying for temporary protected status has the burden of proving that he or she 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.

ORDER: The appeal is dismissed.