

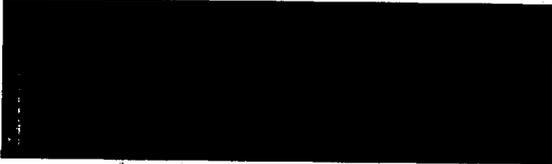
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U.S. Department of Homeland Security
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U.S. Citizenship
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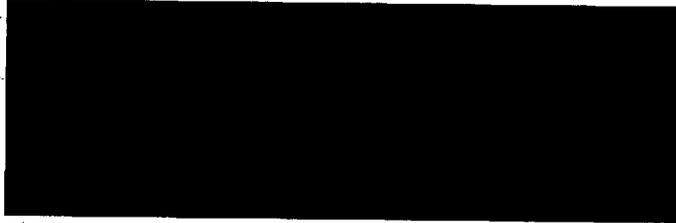
[WAC 01 168 51862]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: AUG 15 2005

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, 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 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 a felony or two or more misdemeanors committed in the United States.

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 parole; 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 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.

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 July 15, 1996, the applicant, under the name of [REDACTED] (date of birth January 28, 1979), was arrested and charged with Count 1, sale/transportation/offer to sell a controlled substance (cocaine), in violation of Health & Safety Code (H&S) 11352(a), a felony; Count 2, possession for sale of cocaine base, H&S 11351.5, a felony; and Count 3, possession of a controlled substance (cocaine), H&S 11330, a felony. On September 3, 1996, the applicant was tried in the Juvenile Court, Superior Court of California, County of Los Angeles, under Case No. [REDACTED]. He admitted to the offense of Count 3, and the court dismissed Counts 1 and 2. He was declared a ward of the court, and he was "placed HOME ON PROBATION in the home of parents in Mexico," and also "placed in the care, custody and control of the Probation Officer," and he was ordered to spend 90 days in Juvenile Hall.
- (2) The Federal Bureau of Investigation fingerprint results report shows that on June 28, 1998, in Beverly Hills, California, the applicant, under the name of [REDACTED] was arrested for attempted burglary, a felony. The court disposition of this offense is not

contained in the record although the applicant was requested on January 16, 2002, to submit certified court dispositions of all arrests.

On appeal, the applicant asserts that the "judge dropped counts 1 and 2, and from count 3, he took out the transportation, for sale, and giving away part of the charge and just left it as possession of a controlled substance, which is a felony, not an aggravated felony." He requests reconsideration because at the time of his arrest, he was a minor, and he has since stayed out of trouble.

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 can not serve as the basis of a finding of inadmissibility.

However, the identity and nationality of an applicant is fundamental to the applicant's claim for TPS. According to the applicant's criminal record (No. 1 above), his name is [REDACTED] and he was born on January 28, 1979. The applicant's birth certificate, his TPS application, his application for employment authorization, his application for asylum, and other documents contained in the record show his name as [REDACTED] and that he was born on January 8, 1977. The applicant has not submitted any evidence to resolve this conflicting claim. Additionally, it is noted that, based on the 1979 birth date, the applicant would have been 19 years of age when he was arrested and tried in 1996. The applicant's conflicting claims as to his true identity not only discredit the applicant's claim as to the critical elements of identity and nationality, but, in the absence of an explanation or rebuttal, also indicate an overall lack of credibility regarding the entire claim. *Cf. Matter of O-D*, 21 I&N Dec. 1079 (BIA 1998).

In discretionary matters, the applicant bears the full burden of establishing eligibility for the benefit sought. Section 244(a)(1) of the Act. Given the applicant's conflicting claims as to his identity, the applicant has failed to meet that burden. The application for TPS will be denied as a matter of discretion.

Beyond the decision of the director, it is noted that the applicant had failed to provide the final court disposition of his arrest detailed in No. 2 above. The applicant is also ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

In removal proceedings held on May 21, 1997, the Immigration Judge ordered the applicant deported "in absentia" to El Salvador.

ORDER: The appeal is dismissed.

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."