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U.S. Citizenship
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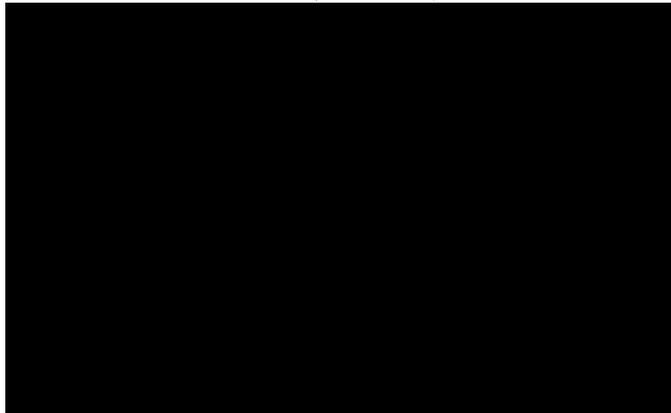
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Office: CALIFORNIA SERVICE CENTER

Date FEB 11 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 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 determined that the applicant was ineligible for TPS because he had been convicted of a felony committed in the United States. The director, therefore, denied the application.

On appeal, the applicant requests that his case be reconsidered because he is the only provider to his family, he has been a good citizen during the past ten years, and he deserves a second chance.

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

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General, now, the Secretary of the Department of Homeland Security (the Secretary), finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

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.

Section 212(a)(2) of the Act, 8 U.S.C. § 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

(A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of ...

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt 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 U.S.C. § 802).

* * *

(C) Any alien who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

The record reflects the following:

1. On July 2, 1983, in the County of Los Angeles, California, Booking No. [REDACTED] the applicant, under the name of [REDACTED] was arrested and charged with possession of an alcoholic

beverage by a minor, in violation of 25662 PC, a misdemeanor. The court's final disposition of this arrest is not reflected in the record.

2. On October 18, 1983, in the County of Los Angeles, California, Booking No. [REDACTED] the applicant, under the name of [REDACTED] was arrested and charged with "POSS AMRIJ FR SL," in violation of 11359 Health and Safety Code (HS), a felony. The court's final disposition of this arrest is not reflected in the record.

3. On July 27, 1984, in the County of Los Angeles, California, Booking No. [REDACTED] the applicant, under the name of [REDACTED] was arrested and charged with possession of marijuana for sale, in violation of 11359 HS, a felony. The court's final disposition of this arrest is not reflected in the record.

4. On April 24, 1985, in the County of Los Angeles, California, Booking No. [REDACTED] the applicant, under the name of [REDACTED] was arrested and charged with being under the influence of a controlled substance, in violation of 11550(a) HS, a misdemeanor. On April 29, 1985, the applicant was convicted of the offense and he was sentenced to serve 90 days in jail.

5. On September 22, 1985, in the County of Los Angeles, California, Booking No. [REDACTED] the applicant, under the name of [REDACTED] was arrested and charged with possession of a controlled substance for sale, in violation of 11351 HS, a felony. The case was dismissed on February 20, 1986.

6. On November 16, 1985, in the County of Los Angeles, California, Booking No. [REDACTED] the applicant, under the name of [REDACTED] was arrested and charged with conspiracy to sell marijuana, in violation of 11360(a) HS, a felony. On January 14, 1986, the applicant was convicted of the offense. He was placed on probation for a period of 36 months, and ordered to spend 123 days in jail.

7. On February 6, 1986, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (indictment date December 19, 1985), the applicant, under the name of [REDACTED] was convicted of Count 1, transportation/sale of marijuana, 11360(a) HS, a felony; and Count 2, possession of marijuana for sale, 11359 HS, a felony. He was placed on probation for a period of 3 years, and ordered to spend 123 days in jail.

8. On March 6, 1986, in the County of Los Angeles, California, Booking No. [REDACTED] the applicant, under the name of [REDACTED] was arrested and charged with under the influence of a controlled substance, in violation of 11550(a) HS, a misdemeanor. On March 7, 1986, the applicant was convicted of the offense, and he was sentenced to serve 90 days in jail.

9. On September 17, 1986, in the County of Los Angeles, California, Booking No. [REDACTED] the applicant, under the name of [REDACTED] was arrested and charged with under the influence of a controlled substance, in violation of 11550(a) HS, a misdemeanor. On September 22, 1986, the applicant was convicted of the offense, and he was sentenced to serve 90 days in jail.

10. On January 8, 1987, in the County of Los Angeles, California, Booking No. [REDACTED] the applicant, under the name of [REDACTED] was arrested and charged with possession of marijuana, in violation of 11359 HS, a felony. The record in this case is not clear as to the final disposition of the arrest.

11. On February 20, 1987, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date January 13, 1987), the applicant, under the name of [REDACTED] was convicted of attempted grand theft auto, in violation of 487(3)/664 PC, a felony. He was sentenced to serve 8 months in jail, concurrent with sentence imposed in Case No. [REDACTED] No. 7 above).
12. On February 10, 1989, in Orange County, California, Case No. [REDACTED] the applicant was arrested and charged with (1) driving under the influence, 23152(a) VC, a misdemeanor; and (2) driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. The final disposition of this arrest is not contained in the record.
13. On October 6, 1989, in Anaheim, California, the applicant was involved in a vehicle accident. He was subsequently arrested and charged with (1) driving under the influence, 23152(a) VC, a misdemeanor, and (2) driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. The final disposition of this arrest is not contained in the record.
14. On June 7, 1990, in the Superior Court of California, County of Orange, California, Case No. C-[REDACTED] (arrest date April 20, 1990), the applicant was convicted of transport/sell narcotic controlled substance (cocaine), in violation of section 11352 HS, a felony. He was placed on probation for a period of 3 years, ordered to spend 150 days in jail, and pay \$100 restitution fine.

The applicant furnished the following records of arrests and/or convictions; however, it is not clear whether the person involved relates to the applicant:

15. On October 5, 2000, in the Municipal Court of Pomona Judicial District, County of Los Angeles, California, Case No. [REDACTED] was indicted for possession of pipe/paraphernalia, 11364 HS, a misdemeanor. On October 6, 2000, [REDACTED] entered a plea of guilty to the offense. [REDACTED] was granted diversion, and placed on deferred entry of judgment for a period of 3 years. Because [REDACTED] violated the terms of the diversion, on July 10, 2001, [REDACTED] was convicted of the crime, placed on probation for a period of 3 years, and ordered to spend 120 days in the county jail.
16. On June 7, 2001, in the Municipal Court of Pomona Judicial District, County of Los Angeles, California, Case No. [REDACTED] was indicted for Count 1, use/under influence of a controlled substance, 11550(a) HS, a misdemeanor; and Count 2, possession of pipe/paraphernalia, 11364 HS, a misdemeanor. On July 20, 2001, a new and different plea of guilt was entered under "Proposition 36," and [REDACTED] was placed on forma probation for a period of 3 years. Because [REDACTED] violated the terms of the probation, on October 2, 2001, "Proposition 36" program was terminated and [REDACTED] was convicted of Counts 1 and 2. [REDACTED] was placed on probation for a period of 3 years and ordered to spend 120 days in the county jail.
17. On October 11, 2001, in the Municipal Court of Pomona Judicial District, County of Los Angeles, California, Case No. [REDACTED] was indicted for battery, 242-243(a) PC, a misdemeanor. On January 9, 2002, [REDACTED] was convicted of the offense. [REDACTED] was placed on probation for a period of 3 years, and ordered to spend 120 days in the county jail.
18. On October 31, 2001, in San Bernardino County, California, Case No. [REDACTED] was arrested and charged with Count 1, possession of drug paraphernalia, 11364 HS; and Count 2, under the influence of a controlled substance, 11550(a) HS. The court's final disposition of these charges is not reflected in the record.

19. On September 3, 2003, in the Superior Court of California, County of San Bernardino, Rancho Cucamonga District, Case No. [REDACTED] the applicant, [REDACTED] was indicted for Count 1, possession of a controlled substance, 11550(a) HS; Count 2, possession of drug paraphernalia, 11364 HS; and Count 3, false representation of identity to a peace officer, 148.9 PC. The court's final disposition of these charges is not reflected in the record.

Grand theft is a crime involving moral turpitude (No. 11 above). *Matter of Chen*, 10 I&N Dec. 671 (BIA 1964); *Matter of Scarpulla*, 15 I&N Dec. 139 (BIA 1974). The applicant is, therefore, inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, based on his conviction of a felony crime involving moral turpitude.

The applicant is also inadmissible to the United States, pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act, based on his drug offense convictions, including transportation or sale (trafficking) of controlled substances (Nos. 4, 6, 7, 8, 9, and 14 above).

Accordingly, the applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his record of at least 5 felony and 3 misdemeanor convictions, and because he is inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(I), 212(a)(2)(A)(i)(II), and 212(a)(2)(C) of the Act. There is no waiver available to an alien found inadmissible under these sections. *See* 8 C.F.R. § 244.3(c)(1). Nor is there a waiver available for convictions of a felony or two or more misdemeanors committed in the United States.

The Federal Bureau of Investigation fingerprint results report shows that on March 13, 1987, in Los Angeles, California, the applicant was placed in removal proceedings (file number A28 705 169).

The burden of proof is upon the applicant to establish that he 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.