

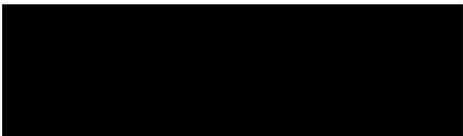
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: FEB 11 2005

[WAC 01 227 51482]

IN RE:

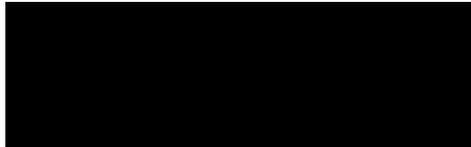
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 either a felony or two or more misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, counsel asserts that the applicant's conviction was in error. While counsel indicates that a brief and/or evidence will be furnished within 30 days, to date, no additional statement or evidence has been provided. Therefore, the record shall be considered complete.

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...

The record reflects the following:

1. On October 3, 1996, in the District Court, Clark County, Nevada, Case No. [REDACTED] (arrest date January 16, 1996), the applicant was convicted of attempted possession of credit card without cardholder's consent, in violation of NRS 193.330, 205.690, a felony. He was placed on probation for an indeterminate period of 3 years under the conditions that he be searched for detection of stolen property, participate in adult education program, and complete 80 hours of community service.
2. On December 21, 1993, in the Eighth Judicial District, Clark County, Nevada, Case No. [REDACTED] (arrest date July 19, 1993), the applicant was convicted of conspiracy to commit grand larceny, NRS 199.480, 205.220, 193.140, a gross misdemeanor (GM). He was placed on probation for a period not to exceed 2 years, ordered to spend 9 months in the county jail, and pay \$550 in restitution fee, suspended,

and ordered to pay \$25 in administrative assessment fees, with condition that he be searched for detection of stolen property, participate in an adult education program, complete 80 hours of community service work, and pay \$550 in restitution fee.

3. The Federal Bureau of Investigation (FBI) fingerprint results report shows that on September 4, 1993, the applicant was arrested in Las Vegas, Nevada, and charged with burglary (felony), and grand larceny (felony). The court's final disposition of this arrest is not contained in the record of proceeding. Nor is it clear in the record whether this case relates to No. 2 above.

4. On April 29, 1991, in the Justice Court, Las Vegas Township, Nevada, the applicant was convicted of possession of stolen property, a misdemeanor (Case No. [REDACTED]). He was ordered to pay \$200 in fines and costs.

Counsel, on appeal, asserts that the applicant was improperly convicted of attempted possession of a credit card without cardholder's consent (No. 1 above) because the "credit card" that he purportedly was in possession was, in fact, a Costco membership card. He further asserts that the conviction is presently the subject of an application for post conviction relief, and he requests an additional 30 days in which to submit supporting evidence or an order vacating or amending the conviction. To date, however, no additional evidence has been provided. The court record clearly shows the applicant was convicted of the crime. Citizenship and Immigration Services (CIS) is required to rely on the court record as it stands, and cannot make determinations of guilt or innocence based on that record. Furthermore, CIS may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

Furthermore, even if the applicant's conviction were to be dismissed, the Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), held that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute.

Accordingly, the applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his one felony and two or more misdemeanor convictions. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States.

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

ORDER: The appeal is dismissed.