

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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



U.S. Citizenship and Immigration Services

PUBLIC COPY

MI

[Redacted]

FILE: [Redacted]
[SRC 02 057 52437]

OFFICE: TEXAS SERVICE CENTER

DATE: JUL 29 2005

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:
[Redacted]

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded to the director for further action.

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 determined that the applicant was ineligible for TPS because he was convicted in Harris County, Texas, on September 28, 1995, of the misdemeanor offense of theft, and on May 21, 1998, of the misdemeanor offense of driving while intoxicated. The director, therefore, denied the application.

The record reveals that this application was initially assigned to an incorrect immigration file [REDACTED] which relates to [REDACTED]. The information pertaining to [REDACTED] was compared with the applicant's TPS application, as well as to the information contained in the applicant's previous file [REDACTED] that was created at the time of the applicant's previous apprehension and subsequent deportation on October 28, 1992. The fingerprint records confirm that the information relating to [REDACTED] (including the two misdemeanor convictions cited as the basis for the director's denial) do not relate to this applicant. Therefore, the director's decision to deny the application based on the record of those two misdemeanor convictions will be withdrawn.

However, an alien shall not be eligible for TPS if the Attorney General finds that there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States. Sections 244(c)(2)(B)(ii) and 208(b)(2)(A)(iii) of the Immigration and Nationality Act (the Act).

The applicant's true immigration record reveals the following offenses:

- (1) On September 23, 1992, in Montreal Canada, the applicant was convicted of Count 1, attempt to obstruct justice, section 127(2) Criminal Code; Count 2 assault with a weapon, § 245.1(1)(a) Criminal Code; Count 3 possession of a weapon, § 85 Criminal Code; and Count 4, uttering threats, § 243.4(1) Criminal Code. He was placed on probation for a period of 6 months as to each count.
- (2) On September 14, 1992, in the United States District Court, Northern District of New York, the applicant was convicted of the misdemeanor offense of "willfully and knowingly enter the United State at a time or place other than as designated by Immigration Officers and eluded examination or inspection by a United States Immigration Officer," in violation of 8 U.S.C. § 1325. He was sentenced to serve 30 days in jail. The applicant was subsequently removed from the United States to El Salvador on October 28, 1992, based on a final order of deportation of the immigration judge.

On appeal, counsel indicates that the FBI results are confusing because they appear to pertain to both the applicant and to a female; counsel asserts that there is no record of any arrests or convictions against the applicant.

The case will be remanded so that the director may render a full adjudication of the application under the correct immigration file. The director may request any additional evidence that she considers pertinent. Similarly, the applicant may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

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.