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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[WAC 01 260 61387]

OFFICE: CALIFORNIA SERVICE CENTER DATE: JUN 29 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 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 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 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.

The record reveals the following offenses:

- (1) On April 7, 1997, in the Superior Court of California, County of San Mateo, Case No. [REDACTED] (arrest date March 26, 1997), the applicant was indicted for Count 1, possession of a controlled substance-cocaine, 11350(a) H&S, a felony; Count 2, possession of false identification card or driver's license, 529.5(c) PC, a misdemeanor;¹ and Count 3, possession of false identification card or driver's license, 529.5(c) PC, a misdemeanor. On July 7, 1997, the applicant was convicted of Count 2. He was placed on probation for a period of 2 years, and ordered to serve 136 days in the county jail. Counts 1 and 3 were dismissed.
- (2) The San Francisco Police Department Criminal History Record (SFPD), furnished by the applicant, shows that on December 26, 1998, the applicant was arrested for Count 1, inflicting corporal injury to a spouse/cohabitant, 273.5 PC, a felony; and Count 2, inflicting injury upon a child, 273d(a) PC, a felony. The SFPD report shows that the applicant was convicted of Count 1, and that Count 2 was dismissed. However, the applicant failed to submit the actual final court disposition of these charges from the court where the hearing took place.

¹ The court record shows that the applicant “entered a plea of nolo contendere to Count 2, violation of PC 529.5(c), a felony.” However, pursuant to PC 529.5, this offense is punishable by imprisonment in a county jail not exceeding one year. Therefore, for immigration purposes, this offense is a misdemeanor as defined in 8 C.F.R. § 244.1.

- (3) The SFPD report shows that on January 9, 1999, the applicant was arrested for violation of a court protective order-domestic violence, 283.6 PC, a misdemeanor. The SFPD report shows that this charge was dismissed. However, the applicant failed to submit the actual final court disposition of this charge from the court where the hearing took place.
- (4) The SFPD report shows that on April 10, 1999, the applicant was arrested for inflicting corporal injury to a spouse/cohabitant, 273.5(a) PC, a felony. The final court disposition of this arrest is not contained in the record.

In a notice of intent to deny dated January 13, 2004, the applicant was requested to submit the final court disposition of any arrests in the United States, including the court disposition of his arrests listed in the Federal Bureau of Investigation fingerprint results report. He was advised that the final court disposition must be obtained from the court where the hearing took place, not from the police department. In response, the applicant submitted the court disposition of his arrest detailed in No. 1 above, and the criminal history record from the San Francisco Police Department for the offenses detailed in Nos. 2, 3, and 4 above.

On appeal, the applicant asserts that he believes he only has one felony conviction; however, he is in the process of hiring an attorney to look into this matter and clear his record.

Even if the applicant's conviction(s) 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.

The applicant has failed to provide the final court dispositions of his arrests detailed in Nos. 2, 3, and 4 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.