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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

M1



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: MAR 02 2005

[WAC 01 171 51561]

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*

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 case will be remanded to the director for further action.

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 two misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant states that at the time of his convictions in 1987 and 1991, he did not have legal advice, and he was told by the public defender that if he accepted the charges, they would not affect him in the future.

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.

The Federal Bureau of Investigation (FBI) fingerprint results report, contained in the record of proceeding, reflects the following:

1. Arrested on October 18, 1984, in Los Angeles, California, for burglary.
2. Arrested on February 7, 1985, in Los Angeles, California, for receiving known stolen property.
3. Arrested on April 5, 1987, in Norwalk, California, and charged with (1) grand theft auto, (2) receiving known stolen property, and (3) "tamper with vehicle." The FBI report shows that the applicant was convicted of (3) "tamper with vehicle."
4. Arrested on June 17, 1991, in El Monte, California, and charged with vandalism. The FBI report shows that the applicant was convicted of this offense.
5. Arrested on December 3, 1998, in Los Angeles, California, for battery of non-cohabitant former spouse.

Based on information contained in the FBI report, the director determined that the applicant was ineligible for TPS because he was convicted of two misdemeanor offenses.

The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

The record of proceeding, in this case, is devoid of the complete, actual final court dispositions of the applicant's arrests to establish that he was in fact convicted of the crimes listed in the FBI report. Nor is there evidence in the record that the applicant was provided the opportunity to submit the court dispositions of all his arrests.

The case will, therefore, be remanded so that the director may accord the applicant an opportunity to submit arrest reports and the court's final dispositions of all of his arrests.

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.