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U.S. Citizenship
and Immigration
Services

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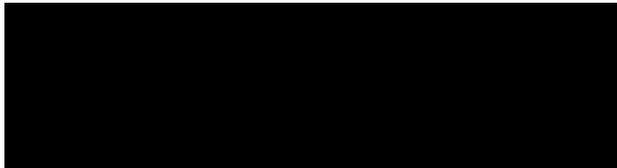
Office: CALIFORNIA SERVICE CENTER

Date: MAR 02 2005

[WAC 01 241 56019]

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 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 she had been convicted of two misdemeanors committed in the United States. The director, therefore, denied the application.

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 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 Federal Bureau of Investigation (FBI) fingerprint results report, contained in the record of proceeding, reflects the following arrests regarding the applicant, under the name of [REDACTED]

1. Arrested on September 2, 1995, in Los Angeles, California, and charged with battery with serious bodily injury, a felony offense. The FBI report shows that the applicant was subsequently convicted of the misdemeanor offense of battery, 242 PC.

2. Arrested on September 5, 2002, in Los Angeles, California, and charged with inflict corporal injury to spouse/cohabitant, a felony offense.

The applicant was, therefore, requested on November 24, 2003, to submit police clearances from every city she had lived since arriving in the United States, including a copy of the certified final court disposition of any arrests in the United States. She was advised that the final disposition must be obtained from the court where the hearing took place, not from the police station. In response, the applicant furnished the following computer records of the County of Los Angeles Sheriff's Department, Inmate Historical Data Center and Inmate Information Center:

3. Arrested on September 2, 1995, for 243(d) PC, battery with great bodily injury, a felony offense. Total Bail Amount: \$50,000; Actual Release Date: September 6, 1995; Release Reason: "TSER;" Reason Description: time served.
4. Case No. [REDACTED] 853.7 PC, failure to appear after written promise, a misdemeanor. Sentence Date: September 11, 2002; Disposition Code: "PROB."
5. Case No. [REDACTED] 242 PC, battery, a misdemeanor. Sentence date: September 11, 2002; Disposition Code: "PROB."
6. Case No. [REDACTED] 273.5(a) PC, corporal injury inflicted upon spouse/cohabitant, a felony. Sentence Date: September 9, 2002; Disposition Code: "49B11."

The director noted that the applicant, in response, furnished information from the County of Los Angeles Sheriff's Department (detailed in Nos. 3 to 6 above) which shows that a search of computer indexing records for the criminal division revealed a record of charges, but that these were not the final court dispositions. Therefore, the applicant was again requested on January 14, 2004, to submit the final court dispositions from the court where the hearing took place. In response, she furnished a letter from the Superior Court of California, County of Los Angeles, indicating that the applicant's arrests on September 2, 1995, and on September 5, 2002 (listed in Nos. 1 and 2 above), were not found under the name [REDACTED] or [REDACTED]. It is noted, however, that the applicant used the name [REDACTED] when she was arrested on September 2, 1995. Furthermore, the applicant failed to submit the final court dispositions from the court where the hearing took place (Los Angeles Municipal Court, Division 83). The director, therefore, determined that the applicant was convicted of two misdemeanors (Nos. 4 and 5 above) and denied the application.

On appeal, the applicant asserts that she was only charged with one offense, not two as shown on the record. She states that she did not willfully fail to appear at her court hearing, and explains that one of her nine children became ill with a serious asthma attack at the time of the hearing. She states that she is presently requesting a new date to appear in court to clarify the issue of "failure to appear."

The applicant, however, is ineligible for TPS based on her failure to comply with the director's request to submit the final court dispositions of all her arrests. 8 C.F.R. § 244.9(a). Accordingly, the director's decision to deny the TPS application will be affirmed.

In addition, the offense of inflicting corporal injury to spouse/cohabitant and battery with serious bodily injury are crimes involving moral turpitude, and convictions of these crimes also may render the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. However, the applicant failed to submit the final court dispositions of all charges from the court where the hearing took place as requested by the director.

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.