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U.S. Citizenship
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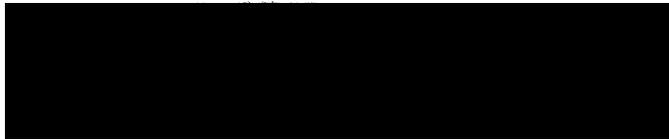


OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAR 21 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.

Cindy M. Gomen

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The application 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 he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant asserts his eligibility for TPS and submits evidence in support of his claim.

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.
8 C.F.R. § 244.1.

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.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The record reveals the following offenses:

- (1) On October 26, 2003, the applicant was arrested at Los Angeles, California, for 001 Counts of Vandalism - \$400;
- (2) On November 7, 2003, the applicant was arrested at Los Angeles, California, for 001 Counts of Poss Marijuana 28.5- Grms; and,

- (3) On December 5, 2003, the applicant was arrested at Los Angeles, California, for 001 Counts of Vandalism - \$400.

On January 15, 2004, the applicant was requested to provide the final court dispositions of these charges. He was advised that the records must be obtained from the court where the cases were heard, rather than from the arresting police department or sheriff's office. He was also advised that the court dispositions must indicate whether a sentence or conviction was imposed, or if the case was dismissed with reason. In addition, he was advised to submit verification from the court of record if the records had been destroyed or cannot be located.

In response, the applicant submitted only the arrest reports and records from the Los Angeles Police Department for the above arrests. He failed to provide the final court dispositions of these arrests. Therefore, the director denied the application on February 18, 2004.

On appeal, the applicant states that visited the Los Angeles Police Department to obtain the requested documentation. The applicant further states that he was advised by the police department that they would secure the responsibility of providing the necessary documentation to the Immigration Service. The applicant also states that "he is moving to show that those arrests, for the most part have been dismissed, erased, or in some form eliminated." In addition, the applicant asserts that he was only convicted of one count of vandalism, and that a second related count of vandalism was dismissed. He further adds that the count for possession of marijuana is non-existent. Thus, he argues that he has only one conviction of a misdemeanor, and, therefore, he is eligible to receive benefits under TPS.

The applicant also submits, on appeal, a court disposition from the Superior Court of California, County of Los Angeles, for his arrest on October 26, 2003, involving offenses of (1) 594(A) PC Misd - Vandalism, and (2) 594.2(A) PC Misd - "Tools 2 Commit Vandlsm/Graffiti." The applicant also submits a letter dated March 17, 2004, from the Clerk of the Superior Court of California, County of Los Angeles, certifying that there is no record in that office relating to his arrest on November 7, 2003, for Possession of Marijuana.

The applicant, however, has failed to provide any evidence revealing the court disposition of his arrest on December 5, 2003, for 001 Counts of Vandalism - \$400, as mentioned above. It is noted that the applicant is currently in custody at the North Kern Prison for a "weapons offense." The disposition of this arrest and the final court disposition of the case also is not included in the record.

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). Therefore, the director's decision to deny the application for TPS on this ground is affirmed.

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.