

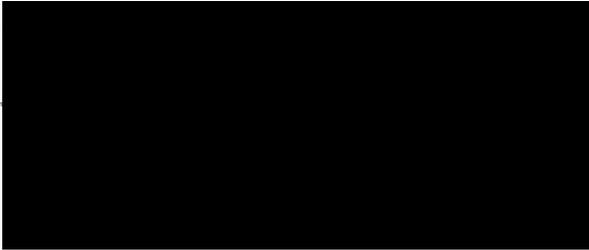
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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Services

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FILE:



Office: California Service Center

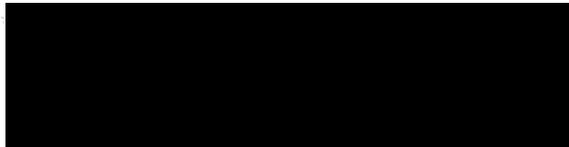
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[WAC 02 050 54836]

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. 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 submits additional evidence in response to the director's denial of his application.

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.

The record reveals the following offenses:

- (1) On May 30, 1992, the applicant was arrested by the Sheriff's Office, Norwalk, California, and charged with vandalism under \$1000 [CA0190000];
- (2) On July 18, 1992, the applicant was arrested by the Police Department, Compton, California, and charged with possession of a narcotic controlled substance [CA0191500]; and
- (3) On March 12, 1994, the applicant was arrested by the Police Department, Long Beach, California, on a charge of possession of a narcotic controlled substance; and a charge of "maliciously deface w/paint" [CA0194100].

On February 17, 2004, the director sent the applicant a Notice of Intent to Deny, in which the applicant was requested to submit the final court disposition for each of the charges detailed above. In response, the applicant submitted the following: a photocopy of a court disposition for the arrests of July 18, 1992; and photocopies of letters from the Superior Court of the State of California, County of Los Angeles, pertaining to records searches performed in response to a request by the applicant. The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on March 29, 2004.

On appeal, the applicant provides a court disposition pertaining to his May 30, 1992 arrest, indicating that on June 24, 1992, the applicant pled guilty to, and was convicted of, vandalism. The applicant also submits two subsequent letters from the Executive Officer/Clerk of the Superior Court of California, County of Los Angeles. The first letter, dated March 11, 2004, indicates that no record was found of any criminal action having occurred in Long Beach, California, since 1992 under the name [REDACTED]. The second letter, dated April 27, 2004, indicates that no record was found of any criminal action having occurred in Long Beach, California, from April 27, 1994 to April 27, 2004, under the name of [REDACTED]. It is noted that the applicant's name at the time of his arrest for vandalism was indicated as [REDACTED] Ponce."

The photocopied court disposition pertaining to the applicant's arrest of July 18, 1992, indicates that the charge of possession of a narcotic controlled substance was dismissed in conjunction with a diversion program. The two letters from the Executive Officer/Clerk of the Superior Court of the State of California, County of Los Angeles, dated March 10 and March 11, 2004, respectively, indicate that no record was found of any criminal cases in Long Beach, California, pertaining to the applicant since 1992.

While the applicant has provided court dispositions for his May 30, 1992, arrest for vandalism as well as his July 18, 1992, arrest for possession of a narcotic controlled substance, he has failed to provide any evidence revealing the final court disposition of his March 12, 1994, arrest, as detailed above. The applicant is, therefore, 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.