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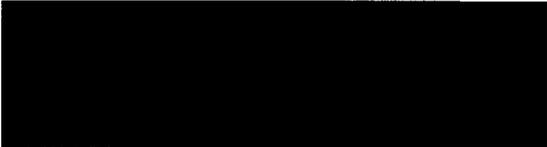
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

[WAC 02 084 52351]

Office: CALIFORNIA SERVICE CENTER

Date: NOV 09 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
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 sustained.

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 after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

On appeal, the applicant submits a statement and additional evidence.

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 that the applicant was arrested in Santa Monica, California, on October 10, 1992, and charged with one count of "POS/MFG/SELL DANG WPN/ETC." in violation of section 12020(a) PC, a felony.

On May 5, 2003, and again on July 21, 2003, the applicant was requested to provide the final court disposition of this charge. The applicant responded to the notice on May 16, 2003, but he failed to provide the final court disposition of the charge detailed above.

The director denied the application on February 13, 2004, for abandonment.

On appeal, the applicant states that he did not respond to the request for additional evidence because he never received it. He submits court documents indicating the final court disposition of his arrest. According to the court documents, the applicant was convicted in the Juvenile Court, Superior Court of California, County of Los Angeles, of possession, manufacture, or sale of a deadly weapon in violation of section 12020(a) PC, a felony, on May 12, 1993. It is noted that the applicant was a 17-year-old juvenile when he was convicted of this charge. He was released to his mother and placed on probation for a period of three years. (Case Number [REDACTED])

Although the record confirms that the applicant was convicted of a felony on May 12, 1993, he was convicted in juvenile court. A conviction in a juvenile court does not count as a felony conviction for immigration purposes. Juvenile court proceedings in the United States' courts are civil rather than criminal in nature. The Board of Immigration Appeals (BIA) has affirmed the well-settled principle that an act of juvenile delinquency is not a crime in the United States, and, therefore, is not a conviction for immigration purposes. *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981); *Matter of De La Nues*, 18 I&N Dec. 140 (BIA 1981). Therefore, the sole ground for denial of the application has been overcome, and the appeal will be sustained.

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. Here, the applicant has met this burden.

ORDER: The appeal is sustained.