

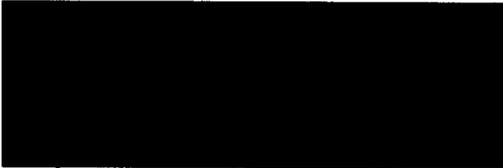
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FILE:



OFFICE: CALIFORNIA SERVICE CENTER DATE: NOV 17 2005

[WAC 01 198 52402]

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:



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, 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 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 had failed to submit evidence necessary for the proper adjudication of the application and denied the application on August 26, 2004.

On appeal, counsel for 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.
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.

The record reveals the following offenses:

1. April 6, 1999, the applicant was arrested in Los Angeles, California, and charged with: "DISRDR CONDUCT: LEWD ACT" in violation of section 647(a) PC, a misdemeanor; three counts of "UNLW OBSTRUCT PEACE OFFICER" in violation of section 148(a)(1) PC, a misdemeanor; one count of "UNLAWFUL TO DISPLAY FRAUD ID CARD" in violation of section 13004(a) VC, a misdemeanor; and, one count of "PURPORT GOV ISSUED DRIVER'S LICENSE" in violation of section 529.5(c) PC, a misdemeanor. The record reflects that the applicant was convicted in the Municipal Court of Los Angeles, Criminal Judicial District, County of Los Angeles, State of California, of count one, "DISRDR. CONDUCT: LEWD ACT" in violation of section 647(a) PC, a misdemeanor. Counts two through six were dismissed in the furtherance of justice pursuant to section 1385 PC. (Case Number [REDACTED]).

2. On October 2, 1999, the applicant was arrested in Los Angeles, California, and charged with one count of theft of property in violation of section 484(a) PC, a misdemeanor.

Pursuant to a letter dated January 9, 2004, the applicant was requested to submit the final court disposition for his arrest on October 2, 1999 (No. 2 above). He was also requested to submit additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The record does not contain a response from 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 appeal, counsel for the applicant asserts that the applicant responded to the Notice of Intent to Deny in a timely manner. Counsel states that the applicant submitted additional documentation relating to the applicant's continuous residence and continuous physical presence in the United States and the final court disposition of the offense detailed in No. 2 above. Counsel submits the documentation he states the applicant submitted in response to the Notice of Intent to Deny.

The final court disposition of the offense detailed in No. 2 above reflects that the applicant was convicted of theft of property in violation of section 484(a) PC, a misdemeanor, in the Municipal Court of Los Angeles, Criminal Judicial District, County of Los Angeles, State of California, on November 24, 1999. (Case Number [REDACTED])

The evidence submitted on appeal confirms that the applicant has been convicted of two misdemeanors. The applicant is ineligible for TPS due to his record of two misdemeanor convictions, detailed in Nos. 1 and 2 above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application will be affirmed.

While the issue of the applicant's inadmissibility was not raised by the director, the applicant is also ineligible for TPS due to his admissibility under section 212(a)(2)(A)(i)(I) of the Act because he has been convicted of two crimes involving moral turpitude. *Matter of Lambert*, 11 I&N Dec. 340 (BIA 1965). *Matter of Garcia*, 11 I&N Dec. 521 (BIA 1966). Therefore, the application also must be denied for this reason. There is no waiver available for inadmissibility under this section of the Act.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.