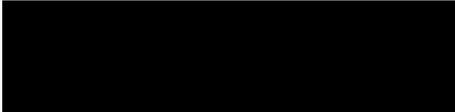


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**U.S. Citizenship
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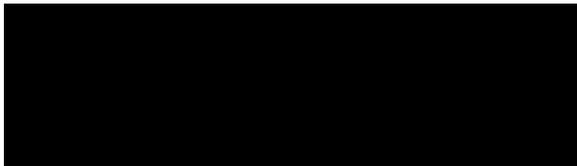
OFFICE: CALIFORNIA SERVICE CENTER

DATE: **SEP 16 2005**

[WAC 01 173 50356]

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, 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 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 the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant asserts that he did respond to the director's request and submitted evidence of his continuous residence and continuous physical presence in the United States. He submits court dispositions of his arrests.

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.

The record reveals the following offenses:

- (1) The Federal Bureau of Investigation (FBI) fingerprint results report shows that on June 8, 1994, in Los Angeles, California, the applicant, under the name of [REDACTED] was arrested for carrying a concealed weapon in a vehicle. The final court disposition of this offense is not contained in the record.
- (2) On August 19, 1997, in the Municipal Court of Los Angeles, Criminal Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date April 29, 1997), the applicant was indicted for Count 1, operate a taxi without franchise, 71.02(b) LAM, a misdemeanor; Count 2, driving a taxi without a permit, 71.03(c) LAM, a misdemeanor; and Count 3, operate a taxi without color scheme/ID, 71.16(a) LAM, a misdemeanor. On March 3, 1998, the applicant was convicted of Count 1. He was placed on probation for a period of 12 months, and ordered to pay \$220 in fines and costs or serve 5 days in jail. Counts 2 and 3 were dismissed.
- (3) On March 10, 1998, in the Municipal Court of Airport Branch Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date February 12, 1998), the applicant was indicted of Count 1, operate a taxi without franchise, 71.02(b) LAM, a misdemeanor; and Count 2, driving a taxi without a permit, 71.03(c) LAM, a misdemeanor. On March 12, 1998, the applicant was convicted of Count 1. He was placed on probation for a period of 12 months, and ordered to pay \$302.74 in fines and costs.

- (4) On January 20, 1999, in the Municipal Court of Los Angeles, Criminal Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date May 26, 1998), the applicant was indicted for Count 4, battery, 242 PC, a misdemeanor. On April 16, 1999, the court added Count 1, inflict corporal injury on a spouse, 273.5(a) PC, a misdemeanor; Count 2, preventing or dissuading witness or victim from testifying, 136.1(b)(1) PC, a misdemeanor; and Count 5, injure telephone/power line, 591 PC, a misdemeanor. On May 17, 1999, the applicant was convicted of Count 1. He was placed on probation for a period of 36 months under the condition that he serve 90 days in the county jail, ordered to pay \$300 in fines and costs, recommended for work furlough or "do 60 days county jail consecutive, plus 30 days Cal Trans," and enroll and complete a 12-month batterer's counseling program, and attend 104 alcoholic anonymous meetings. Counts 2, 4, and 5 were dismissed. While this record does not contain any information regarding Count 3, it is noted that in another court document, Count 3 was listed as assault with a deadly weapon/instrument, 245(a)(1) PC, a misdemeanor. The final disposition of this offense is not reflected in the record.
- (5) The FBI report shows that on March 10, 1999, in Los Angeles, California, the applicant was arrested for battery, 242 PC, a misdemeanor. The record does not contain any information to indicate that this offense relates to No. 4 above.
- (6) The FBI report shows that on September 9, 2000, in Los Angeles, California, the applicant, under the name of [REDACTED] was arrested for Count 1, failure to appear, written promise; Count 2, "fail to pay fine veh opr;" Count 3, "fail to pay fine veh opr;" and Count 4, inflicting corporal injury to a spouse/cohabitant. The final court disposition of this arrest is not contained in the record.
- (7) On June 18, 2001, in the Municipal Court of Los Angeles, Criminal Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date May 14, 2001), the applicant was indicted for Count 1, operate a taxi without franchise, 71.02(b) LAM, a misdemeanor; Count 2, driving a taxi without a permit, 71.03(c) LAM, a misdemeanor; and Count 3, unlawful operation of a taxicab without decal ID, 71.16(c) LAM, a misdemeanor. On August 1, 2001, the case was dismissed and proceedings were terminated.
- (8) On September 27, 2002, in the Municipal Court of Los Angeles, Central Arraignment Judicial, County of Los Angeles, California, Case No. [REDACTED] (arrest dated September 4, 2002), the applicant was indicted for Count 1, operate a taxi without franchise, 71.02(b) LAM, a misdemeanor; and Count 2, driving a taxi without a permit, 71.03(c) LAM, a misdemeanor. On November 27, 2002, the applicant was convicted of Count 1. He was placed on probation for a period of 24 months, and ordered to pay \$1,025 in fines and costs. Count 2 was dismissed.

On appeal, the applicant submits a letter dated September 2, 2003, from the Superior Court of California, County of Los Angeles, indicating that the court has no record making reference to [REDACTED] from January 1, 1990 to the present, regarding the 1999 arrests for 242 PC for battery (No. 5 above), and for 12025(a)(1) PC (carrying a concealed weapon within a vehicle, No. 1 above). He asserts that "either the charges are an error, or never persecuted for not enough evidence. Personally, I do not recall any offense committed by me of this type." The applicant further asserts that the charges for battery (No. 4 above) was dismissed under PC 1203.4.

It is noted, however, that at the time the applicant was arrested for No. 1 above, in addition to No. 6 above, he used the name [REDACTED]. The letter from the court does not show that a search of their records was made under this name. Additionally, the applicant submitted documentation indicating that on

October 4, 2002, the court set aside the applicant's conviction of battery (detailed in No. 4 above), and dismissed the case pursuant to 1203.4 PC. However, the Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), held that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. Therefore, the applicant remains convicted, for immigration purposes, of No. 4 above.

The applicant is ineligible for TPS due to his record of at least 4 misdemeanor convictions, detailed in Nos. 2, 3, 4, and 8 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application will be affirmed.

It is noted that the FBI report shows that on April 4, 1992, in San Ysidro, California, the applicant was placed in removal proceedings under file number [REDACTED]

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.