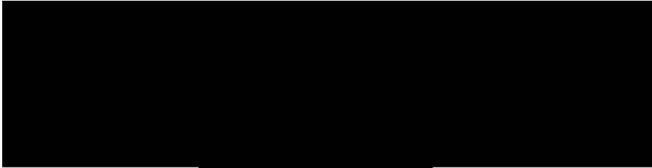


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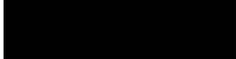


U.S. Citizenship
and Immigration
Services

ML



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUL 03 2006

[WAC 05 154 72318]

[WAC 01 173 51488]

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, Chief
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 matter will be remanded for further consideration and action.

The applicant is a 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 applicant filed her initial TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 01 173 51488.

The record reveals the following offenses:

1. On September 6, 1993, the applicant was arrested in Los Angeles, California, under the name [REDACTED] and charged with theft of property in violation of section 484(a) PC, a misdemeanor. On March 5, 2003, the applicant pled guilty to this charge in the Municipal Court of Los Angeles, Van Nuys Judicial District, County of Los Angeles, State of California. The court amended the charge from a misdemeanor to an infraction pursuant to section 490.1 PC.¹ (Case No. [REDACTED])
2. On May 2, 2001, the applicant pled guilty in the District Court, Clark County, Nevada, to conspiracy to commit larceny in violation of NRS 199.480, 205.222, a gross misdemeanor. (Date of Arrest: November 8, 1996; Case No. [REDACTED])

The director denied that application on November 25, 2003, because he found the applicant had been convicted of two misdemeanors.

The applicant did not file an appeal from the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 3, 2005, and indicated that she was re-registering for TPS or renewing her temporary treatment benefits.

The director denied the current TPS application on July 27, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of her temporary treatment benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17. If an applicant is applying for renewal of temporary treatment benefits, he or she must have a pending TPS application.

¹ Pursuant to section 490.1 PC, where the value of the stolen property does not exceed \$50, the offense may be charged as a misdemeanor or an infraction, at the discretion of the prosecutor, provided that the person charged with the offense has no other theft or theft-related convictions.

In this case, the director incorrectly denied the applicant's initial Form I-821 because he found that the applicant had been convicted of two or more misdemeanors. The director stated in the denial decision that the applicant had been convicted of conspiracy to commit larceny on November 8, 1996 and April 26, 2001. The court documents contained in the record of proceeding reveal that the applicant's guilty plea to the charge of conspiracy to commit theft on May 2, 2001, relates to her arrest on November 8, 1996, and does not represent two separate offenses. (No. 2 above).

The applicant has only been convicted of one misdemeanor, detailed in No. 2 above. The charge in No. 1 above was reduced from a misdemeanor to an infraction by the court pursuant to section 490.1 PC. The basis for the denial of the applicant's initial TPS application has been overcome. Therefore, the denial of the applicant's initial applicant's initial and current TPS applications will be withdrawn, and the matter will be remanded.

The director shall review the applicant's initial and current TPS applications de novo and shall issue new decisions on both applications. It is noted that the record of proceeding, as it is presently constituted, does not contain sufficient evidence to establish the applicant's identity and nationality as described at 8 C.F.R. § 244.9(a)(1). The record also does not contain sufficient evidence to establish the applicant's continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001, as described at 8 C.F.R. §§ 244.2(b) and (c). The director may request additional evidence he deems necessary. Accordingly, the matter is remanded for action consistent with the foregoing and issuance of two new decisions.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for further action consistent with the above and entry of two new decisions.