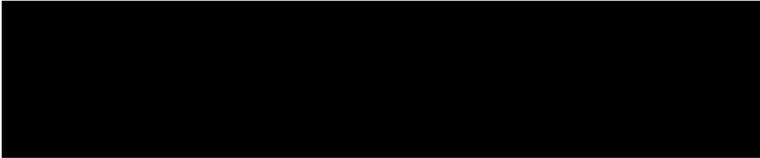


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prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services



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FILE: [REDACTED]
[EAC 01 165 53771]

OFFICE: VERMONT SERVICE CENTER

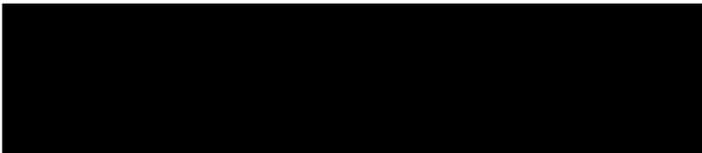
DATE: NOV 15 2011

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:



PHOTIC COPY

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, Vermont 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 denied the application because he found that the applicant had failed to submit requested court documentation relating to his/her criminal record.

On appeal, counsel for the applicant submits a brief and photocopies of court documentation relating to the applicant's criminal record.

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 applicant's Federal Bureau of Investigation (FBI) fingerprint results report revealed the following offenses:

- a. On September 17, 1993, the applicant was arrested in Washington, D.C., and charged with unauthorized use of a motor vehicle.
- b. On May 13, 1995, the applicant was arrested in South Boston, Massachusetts, and charged with domestic dispute.
- c. On August 14, 2002, the applicant was arrested in Chelsea, Massachusetts, and charged with threat and domestic assault and battery.

On July 30, 2004, the applicant was requested to provide the final court disposition of these arrests. 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 March 11, 2005.

On appeal, counsel for the applicant submits the following:

1. documents from the Superior Court of the District of Columbia, Criminal Division, indicating that the applicant was arrested in Washington, D.C., on September 17, 1993, and charged with the following offenses: (A) destruction of property valued at over \$200 in violation of 22 D.C. Code, 403; (B) first degree theft in violation of 22 D.C. Code, Section 3811, 3812(a); (C) receiving stolen property in violation of 22 D.C. Code, Section 3832(a), 3832(C)(1); (D) unauthorized use of a vehicle in violation of 22 D.C. Code, Section 3814). The documents indicate that a bench warrant was issued on October 7, 1993, and the indictment on the four counts detailed above was filed on November 17, 1993. On November 30, 1993, the applicant was not present in court and the bench warrant remained outstanding. On August 27, 2001, the bench warrant was re-written for transfer to the U.S. Marshall Service for service. On September 17, 2001, the old bench warrant was canceled and a new bench warrant was sent to the U.S. Marshall. On February 6, 2002, the U.S. Marshall Service notified the court that the case would not be pursued. On May 13, 2002, the government submitted a motion to quash the bench warrant and dismiss the indictments. On May 16, 2002, the government's motion to quash the bench warrant and dismiss the indictment was granted and the order was entered. [REDACTED] It is noted that there was never a court finding of guilt or innocence with regard to these charges. The indictments were dismissed due to paperwork reduction regulations. These documents relate to the offense detailed in No. a above.
2. a document from the Boston Municipal Court, Criminal Division, indicating that on June 13, 1995, the applicant requested trial without a jury and the applicant pled guilty to an undisclosed charge. It appears that adjudication of guilt was deferred and the applicant was placed on probation until June 12, 1996, on condition that he refrain from any abuse of the victim. The charge was dismissed on November 21, 1997. [REDACTED] It is noted that this document does not contain sufficient information to establish that it relates to the offense detailed in No. b above.
3. a document from the Chelsea Criminal Court, Chelsea, Massachusetts, indicating that the applicant was arrested in Chelsea, Massachusetts, on February 20, 1996, and charged with illegal possession of a Class D Substance in violation of C94C, s. 34. The document indicates that the charge was dismissed on July 30, 1996, upon payment of \$200.00. [REDACTED] This offense is not listed on the applicant's fingerprint results report.
4. a document from the Chelsea Criminal Court, Chelsea, Massachusetts, indicating that the applicant was arrested in Chelsea, Massachusetts, on February 6, 1998, and charged with: (A) one count of assault and battery with a dangerous weapon in violation of C24 s 15A; (b) drunk in public in violation of S 11,5; (C) disorderly person in violation of c272, s53; (d) assault and battery on a police officer in violation of C264m, s. 13(d). The court document further indicates the court dismissed all charges without prejudice on March 9,

1998. [REDACTED] This arrest is not reflected on the applicant's fingerprint results report.

5. a court document from the Chelsea Criminal Court, Chelsea, Massachusetts, indicating that the applicant was arrested in Chelsea, Massachusetts, on March 6, 1998, and charged with assault and battery in violation of c265 s13a. The document further indicates that the charge was dismissed without prejudice by the court on March 9, 1998, and the default was removed on April 10, 2002. [REDACTED]. This offense is not listed in the applicant's fingerprint results report.
6. On August 15, 2002, the applicant was arrested in Chelsea, Massachusetts, and charged with assault and battery in violation of C 265 § 13(A)(a) and threat to commit a crime in violation of C 275 § 2. The applicant pled guilty to both charges on January 15, 2003. The court found sufficient facts to convict the applicant, but continued the case without a guilty finding for a period of 365 days, until January 14, 2004, provided the applicant complied with the probation conditions imposed. The court document further indicates that the applicant completed the terms of his probation and the charge was dismissed on January 14, 2004. [REDACTED]

The applicant, on appeal, has provided sufficient evidence to establish that he pled guilty to two misdemeanor charges (No. 4 above). These charges were subsequently dismissed on January 14, 2004, not based on the merits of the case, but because the applicant apparently complied with the conditions of his probation. Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999). Therefore, the applicant's guilty pleas to the misdemeanor offenses detailed in No. 4 above are considered convictions for immigration purposes. The applicant is ineligible for TPS due to his record of at two misdemeanor convictions. 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 applicant's 2005 fingerprint results report indicates that the applicant was arrested in Chelsea, Massachusetts, on May 9, 2005, and charged with violation of an abuse prevention order in violation of C209A, § 7. This arrest must be addressed in any further proceeding before CIS.

It is further noted that the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal, filed with the Newark, New Jersey, Asylum Office on February 10, 2005, under CIS registration number A94 199 834. The application is still pending as of the date of this decision.

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.