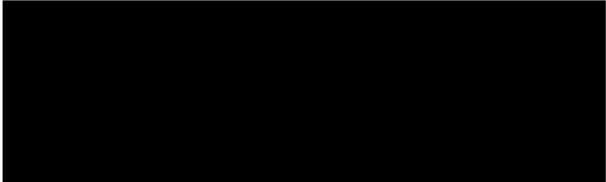




U.S. Citizenship
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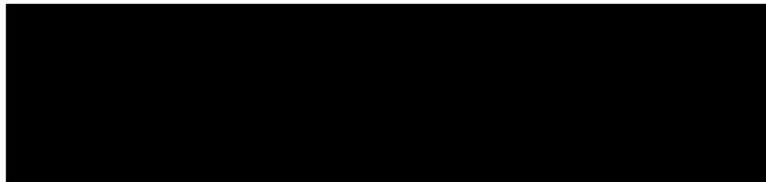
[WAC 05 131 75891]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: JAN 29 2007

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 appeal will be dismissed.

The applicant is 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 record reveals that the applicant filed a TPS application during the initial registration period on March 10, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 167 50099. The director denied that application on January 15, 2002, because the applicant had failed to submit requested court documentation relating to his criminal record, and photo identification to establish identity and nationality. Although the applicant was advised that he could appeal the director's decision by filing a completed Form I-290B, Notice of Appeal to the Administrative Appeals Office, within 30 days of the director's decision, the record does not contain evidence that the applicant filed a Form I-290B.

On February 15, 2002, during the initial registration period, the applicant filed another TPS application under CIS receipt number WAC 02 117 54743. In a Notice of Intent to Deny dated February 24, 2003, the applicant was requested to submit evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. He was also requested to submit the final court dispositions of all of his arrests including arrests listed in the Federal Bureau of Investigation (FBI) fingerprint results report; namely:

- (1) Arrested on April 1, 1998, in Norwalk, California, for false ID to a peace officer (name used: [REDACTED])
- (2) Arrested on April 20, 1999, in Norwalk, California, for possession/purchase coke base for sale (name used: [REDACTED])

The applicant responded by furnishing evidence to establish continuous residence and continuous physical presence during the qualifying period. He also furnished a letter from the Los Angeles Superior Court, Southeast Judicial District, Norwalk, California, indicating that a thorough and diligent search of their criminal records/indexing between the years 1979 to 2002 revealed no case number or record under the name of "[REDACTED]," date of birth 10-26-1973. On September 12, 2003, the applicant was again requested to submit the final court dispositions of his arrests under the names of [REDACTED] and [REDACTED]. In response, the applicant furnished additional letters from the County of Los Angeles Superior Court, one letter stating that there is no case number or record under the name of [REDACTED], date of birth 10/26/73, and the second letter stating that there is no case number or record under the name of [REDACTED], date of birth 10/26/73. Both letters state: "It should be understood that this does not mean that records do not exist under another spelling, name or by some other classification, but that with the information furnished to our office and to the best of our knowledge, no such records exist in the Superior Court of California for the County of Los Angeles." It is noted that the applicant submitted a statement as an addendum to his TPS application (WAC 02 117 54743), stating:

The first time I was arrested because I showed a fake ID to a deputy. I was put in jail for one night. They let me go at about 6 the next morning.

The second arrest was in Inglewood for a drug crime. I was looking for a car and the cops told me to stop. They accused me of selling drugs. But, I had no drugs on me. I was in jail for 6 days. I did not see a judge or pay any fine.

On January 23, 2006, the District Director, Los Angeles, California, denied the second application (WAC 02 117 54743) because after conducting system checks with various criminal and administrative indices, the record shows that the applicant was convicted of possession of marijuana for sale, a felony offense.

It is noted, however, that the court disposition of the offense of possession of marijuana for sale is not contained in the record or proceeding. It is further noted that during the interim of the pending TPS application (WAC 02 117 54743), the applicant filed the current Form I-821, Application for Temporary Protected Status (WAC 05 131 75891), on February 8, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application on May 9, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. It appears that the director was referring to the denial of the applicant's first TPS application (WAC 01 167 50099).

A remand of this case to the director based on a premature denial of the re-registration application would not overcome the denial of the applicant's second TPS application, because the record as presently constituted is devoid of the final court dispositions of his arrests listed on the FBI report and as detailed in Nos. 1 and 2 above.

On appeal, the applicant states that he wishes to continue with the TPS program. He submits another letter from the Superior Court of California, County of Los Angeles, stating that there is no case number or record under the name of [REDACTED], date of birth 10/26/73. The applicant also submits the following court documents:

- (3) On February 28, 2002, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date January 21, 2002), the applicant was indicted for Count 1, unlicensed driver, 12500(a) VC, a misdemeanor; and Count 2, no proof of car insurance, 16028(a) VC, an infraction. On March 5, 2002, the applicant was convicted of Count 1. He was placed on probation for a period of 12 months, and ordered to pay \$546 in fines and costs. Count 2 was dismissed.

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, 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.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The applicant has failed to submit the final court dispositions of his arrests listed on the FBI report. The applicant admitted that he was arrested and put in jail for "showing a fake ID to a deputy" and for "selling drugs," but that he was subsequently released from jail and did not see a judge. While the letters from the Superior Court indicated that no records were found under the applicant's alias names of [REDACTED] and [REDACTED] (dates of birth 10/26/73), there is no evidence that the arrest information, such as the place of arrest and offense, including the applicant's fingerprints, and other pertinent information, were used for the search. It is noted that the Los Angeles district office, in consultation with the Superior Court, noted that the date of birth used for [REDACTED] was October 26, 1976. If the applicant, in fact, was not prosecuted for these crimes, such records should have been filed with the appropriate court and/or state or district attorney. Furthermore, there is no evidence that the applicant's case was heard at that court. It may be assumed that the applicant would have known where he was arrested and where his case was heard.

The applicant has failed to submit the final court dispositions of his arrests detailed in Nos. 1 and 2 above. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

The burden of proof is upon the applicant to establish that he 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.