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U.S. Citizenship
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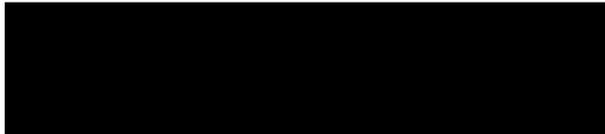


[WAC 01 173 52625]

OFFICE: CALIFORNIA SERVICE CENTER DATE: MAY 08 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.

A handwritten signature in cursive script, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further action.

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.

On February 2, 2004, the director denied the application due to abandonment, because the applicant failed to appear to be fingerprinted or to request that his fingerprint appointment be rescheduled.

On February 13, 2004, the applicant filed a motion to reopen and reconsider. The applicant stated that he failed to appear to be fingerprinted because he had moved and didn't receive the fingerprint appointment notice. The applicant was issued a new fingerprint appointment notice, and he appeared to be fingerprinted as scheduled.

On April 13, 2004, the director denied the application because he found that the applicant had been convicted of three misdemeanor offenses.

On May 7, 2004, the applicant filed an appeal from the Notice of Decision dated April 13, 2004. On appeal, The applicant submits court documents from the Superior Court of California, County of Los Angeles, and from the Los Angeles Police Department.

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 Federal Bureau of Investigation (FBI) Identification Report contained in the record of proceeding reflects the following:

1. On August 1, 2000, the applicant was arrested in Downey, California, and charged with one count of theft. The FBI record does not reflect the final court disposition of this offense.
2. On November 25, 2000, the applicant was arrested in Santa Ana, California, under the name [REDACTED] and charged with one count of burglary and one count of presenting false identification to a peace officer. The FBI report indicates that the applicant was convicted in the Municipal Court of Santa Ana, State of California, of the following charges: burglary in the second degree in violation of section 460(b) PC, a misdemeanor; theft of personal property/petty theft in violation of section 484(a)/488 PC, a misdemeanor; and, providing false identification to a peace officer in violation of section 148.9 PC, a misdemeanor.
3. On February 7, 2003, the applicant was arrested in Los Angeles, California, and charged with one count of battery of a peace officer with injury. The FBI record indicates that prosecution was declined in this case, and the applicant was released.

Based on information contained in the FBI report, the director determined that the applicant was ineligible for TPS because he had been convicted of three misdemeanors.

The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

The record of proceeding, in this case, does not contain the court's charging documents and final dispositions for the applicant's arrests to establish that he was in fact convicted of the crimes listed in the FBI report. Nor is there evidence in the record that the applicant was requested to submit the court documents of all his arrests.

The case will, therefore, be remanded so that the director may accord the applicant an opportunity to submit arrest reports and the court's final dispositions of all his arrests. The director shall enter a new decision.

It is noted that the applicant, on appeal, submits a letter from the Superior Court of California, County of Los Angeles, indicating that a criminal record search was conducted under the name [REDACTED], AKA [REDACTED] [REDACTED] date of birth October 3, 1978, and no record of felony or misdemeanor convictions was found. The applicant also submits a letter dated May 4, 2004, from the Los Angeles Police Department stating

that a copy of the applicant's arrest record would be mailed directly to Citizenship and Immigration Services (CIS) in four to six weeks. There is no indication in the record that CIS ever received a copy of the applicant's arrest record from the Los Angeles Police Department. Nevertheless, neither of these documents constitutes a final court disposition document. The applicant has provided a criminal record search from the Superior Court of California, County of Los Angeles, relating to his arrest in Santa Ana, California on the charges of burglary, theft of personal property, and providing false identification to a police officer. Since the applicant was arrested and charged with these offenses in Santa Ana, California, his criminal proceeding would not have been conducted in the Superior Court of California, County of Los Angeles, but rather in a different jurisdiction.

It is further noted that the record of proceeding, as it presently constituted, does not contain sufficient evidence to establish the applicant's identity and nationality or his continuous residence in the United States since February 13, 2001 and his continuous physical presence in the United States since March 9, 2001. Finally, it is noted that the applicant, under penalty of perjury, falsely indicated on Part 4, Line 2.a., and d., of his application for TPS that he had not been convicted of any misdemeanors and that he had never been arrested. This misrepresentation of a material fact in an application for immigration benefits would also render the applicant inadmissible under section 212(a)(6)(C) of the Act.

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 director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.