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OCT 22 2007



FILE:  OFFICE: CALIFORNIA SERVICE CENTER DATE:  
[WAC 05 195 70076]

IN RE: Applicant:



APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration  
and Nationality Act, 8 U.S.C. § 1254



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.

for 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 case 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.

The director denied the application after determining that the applicant had failed to submit the final court dispositions of all of her arrests.

On appeal, counsel asserts that the applicant has no convictions and is therefore not ineligible for TPS. He submits the requested court documentation.

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. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The record reveals the following offenses:

- (1) On February 1, 1991, in Arlington Heights, Illinois, the applicant (name used: [REDACTED]) was arrested for retail theft, Illinois Revised Statute (IRS) 38 § 16A-3A, a misdemeanor. On March 5, 1991, in the Circuit Court of Cook County, Illinois, Case No. [REDACTED] "bond was set by rule of court." On March 22, 1991, a warrant was issued for the arrest of the applicant based on bond forfeiture. On March 17, 2003, the warrant was quashed and a *nolle pros* was issued on the bond violation charge [this warrant appears to relate to No. (4) below]. On April 10, 2003, the case (retail theft) was stricken from docket with leave to reinstate [SOL] because the complaining witness was not in court (CWNIC).
- (2) On December 17, 1992, in Prospect Heights, Illinois, the applicant (name used: [REDACTED]) was arrested for battery, IRS 38 § 12-3A, a misdemeanor. On June 9, 1993, in the Circuit Court of Cook County, Illinois, Case No. [REDACTED] the case was stricken off the docket with leave to reinstate [SOL].
- (3) On December 21, 2000, in Dundee, Illinois, the applicant (name used: [REDACTED]) was arrested for retail theft, 720 ILCS 5/16A-3A, a misdemeanor. On June 1, 2001, the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois (Case No. [REDACTED]) entered a *nolle pros* on the case.
- (4) On March 10, 2003, in Arlington Heights, Illinois, the applicant (name used: [REDACTED]) was arrested for violation of bail bond, under Case No. [REDACTED] detailed in No. (1) above. On March 17, 2003, the Circuit Court of Cook County, Illinois, entered a *nolle pros* on the bail bond violation.

The record, in this case, shows that the applicant was not convicted of the four charges listed as Nos. 1, 2, 3, and 4 above. Therefore, the applicant is not ineligible for TPS under section 244(c)(2)(B)(i) of the Act.

It is noted, however, that the applicant filed a TPS application during the initial registration period on October 29, 2001, under receipt number LIN 02 028 52760. That application remains pending and must be adjudicated and/or concluded before a decision is made on the applicant's second (re-registration) application [WAC 05 195 70076]. It is also noted that the record of proceeding contains: (1) a letter dated April 26, 2005, from the District Director, Chicago, Illinois, advising the applicant that her TPS application was approved; and (2) a copy of an Employment Authorization Card (EAD), valid from September 10, 2002 through September 9, 2003, issued under category A12, under receipt number LIN 03 025 52398. It is not clear whether the letter and/or the EAD were issued in error.

Accordingly, the director's decision to deny the re-registration application will be withdrawn, and the case will be remanded for further action and adjudication of the initial application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

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.