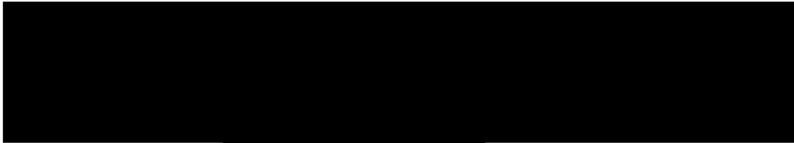


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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **JAN 30 2008**  
[WAC 01 277 58559]

IN RE: Applicant: [REDACTED]

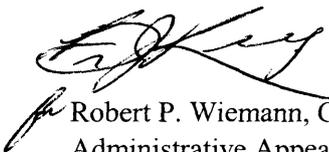
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 appeal will be sustained.

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 criminal record.

On appeal, the applicant submits a statement and additional evidence.

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 TPS 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.

The record reveals that the applicant was arrested in Garden Grove, California, on June 26, 2002, and charged with one count of “assault and battery.” It is noted that the applicant was 13 years old at the time he was arrested.

On March 10, 2004, the applicant was requested to provide the final court disposition of his arrest. In response, the applicant submitted a court record provided to him by [REDACTED] Deputy Probation Officer, Orange, California. The court record indicates that the applicant was placed on diversion (informal probation) until March 16, 2003. He was ordered to complete 20 hours of community service on or before January 16, 2003; to attend classes on life skills (peer pressure assertiveness training) and drugs, alcohol, and tobacco education; to attend individual and family counseling; to attend school regularly and attend all classes; to provide weekly school progress reports as directed; and, to attend anger management classes. On January 27, 2003, [REDACTED] found that the applicant had successfully complied with the terms of his informal probation and terminated his probation period. (Case No. [REDACTED])

The director denied the application because the applicant failed to submit the final court disposition of his arrest.

On appeal, the applicant states that he went to the court on March 16, 2004, to request a copy of the final court disposition of his arrest, but he was told that the court had no record of his arrest. He submits a “Certificate of Fact” from the Superior Court of the State of California, County of Orange, stating that the

Orange County Juvenile Court index and database were researched and no juvenile court record was found for [REDACTED]' date of birth September 10, 1988. The applicant also submits a copy of the same document from [REDACTED], previously submitted in response to the Notice of Intent to Deny.

The applicant was a 13-year-old minor when he was arrested on June 26, 2002. Juvenile court proceedings in the United States' courts are civil rather than criminal in nature. The Board of Immigration Appeals (BIA) has affirmed the well-settled principle that an act of juvenile delinquency is not a crime in the United States and, therefore, not a conviction for TPS purposes. *Matter of Ramirez-Rivero*, 18 I&N 181 (BIA 1981); *Matter of De La Nues*, I&N Dec. 140 (BIA 1981).

Since the applicant has provided the final court disposition of his arrest, he has overcome the sole basis for the denial of the application. Further, as a juvenile, the applicant's arrest and/or conviction does not qualify as a crime for immigration purposes. Consequently, the director's decision will be withdrawn and the appeal will be sustained.

An alien applying for TPS 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. Here, the applicant has met this burden.

**ORDER:** The appeal is sustained.