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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

M1

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JAN 30 2009

[EAC 01 194 55963]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

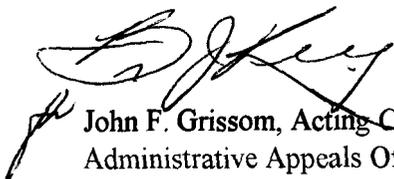
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office. If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's temporary protected status was denied by the Director, Vermont Service Center. The case was remanded by the Administrative Appeals Office (AAO). The Director, Vermont Service Center, subsequently denied the application again and it is now before the AAO on appeal. The case will be remanded.

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 determined that the applicant had been convicted of two misdemeanors in the United States. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant was only convicted of one misdemeanor and is therefore eligible for TPS.

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 designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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:....

Section 244(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.-

(2) ELIGIBILITY STANDARDS.-

(B) ALIENS INELIGIBLE. - An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

- (i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

"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.

United States Citizenship and Immigration Services (USCIS) records reveal that on December 20, 2000, the applicant was charged with "DWI" and "Driving Without a License." On May 9, 2002, the applicant was found guilty of having committed a delinquent act in regards to the 'DWI' and "Driving Without a License" charges. The applicant was placed on probation. On October 23, 2003, the court ordered the case "Closed Successfully."

The record also reveals that on February 26, 2002, the applicant pled guilty to "Assault 2<sup>nd</sup> Degree", a misdemeanor and was ordered to pay a fine of \$300 and to enroll in a 26 week counseling program.

The director determined that the applicant is ineligible for temporary protected status because of his two misdemeanor convictions. 8 C.F.R. § 244.4(a).

On appeal, counsel states that one of the applicant's convictions was as a juvenile; therefore the applicant only has one misdemeanor conviction and is consequently eligible for TPS. In support of this claim, the applicant submits court documents indicating that the applicant's conviction for "DWI" and "Driving without a License" were as a juvenile delinquent. USCIS records contain a copy of the applicant's passport which establishes that he was 17 years old at the time these crimes were committed and was thus a juvenile. The case was adjudicated in the Circuit Court for Hartford County sitting as a Juvenile Court. Juvenile court proceedings in the United States' courts are civil rather than criminal in nature. The Board of Immigration Appeals 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 legalization purposes. *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (1981); *Matter of De La Nues*, 18 I&N Dec. 140 (1981).

**Accordingly, the applicant has overcome the single deficiency cited in the director's Notice of Decision.** The applicant stands convicted of one misdemeanor. This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 210.3(d)(3).

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by United States Citizenship and Immigration Services (USCIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b). The applicant has met this burden. However, the validity period of the applicant's fingerprint check has expired.

Accordingly, the case is remanded for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Thereafter, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

**ORDER:** The case is remanded for appropriate action and decision consistent with the foregoing.