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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[SRC 01 203 57002]

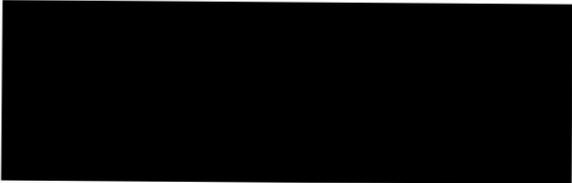
Office: VERMONT SERVICE CENTER

Date: SEP 17 2009

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 Vermont Service Center. Any further inquiry must be made to that office.


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. The applicant's appeal is sustained and the case remanded to the director.

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 record reveals that the applicant filed a TPS application during the initial registration period on May 7, 2001, under receipt number SRC 01 203 57002. The Director, Texas Service Center, approved that application on August 3, 2001.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8.C.F.R. § 244.14(a)(1).

The director determined that the applicant had been convicted of a felony in the United States.

On appeal, counsel for the applicant states that the applicant had been convicted as a juvenile and therefore remains 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,....

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. 8 C.F.R. § 244.1.

The record reveals the following offenses:

- (1) On August 20, 2004, the Houston, Texas Police Department arrested the applicant for "Theft >=\$1,500 < \$20K."
- (2) On January 6, 2005, the Houston, Texas Police Department arrested the applicant for "Unauth Use of Vehicle." [REDACTED]
- (3) On February 8, 2008, the Houston, Texas Police Department arrested the applicant for "Poss Marij 0-2 oz." [REDACTED].

Pursuant to a letter dated March 18, 2008, the applicant was requested to submit the final court disposition for each of the charges detailed above. In response, the applicant submitted the

requested documentation. According to the court dispositions, on February 16, 2005, the applicant was found guilty of "Unauthorized Use of a Motor Vehicle", a felony; and on March 6, 2008, the applicant pled guilty and an Order Deferring Adjudication of Guilt was granted for "Possession of Marihuana 0-2 oz.", a misdemeanor."

The director determined that the applicant is ineligible for temporary protected status because of his felony conviction. 8 C.F.R. § 244.4(a) and withdrew the applicant's TPS.

On appeal, counsel pointed out that the applicant had been convicted as a juvenile and therefore remains eligible for TPS. 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).

The record establishes that the applicant was 14 years old and 17 years old at the time of the crimes and the court found him to have engaged in delinquent conduct. Accordingly, the applicant has overcome the single deficiency cited in the director's Notice of Decision.

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. The record does not reflect any grounds that would bar the applicant from receiving TPS. There are no other known grounds of ineligibility; consequently, the director's decision will be withdrawn. 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 appeal is sustained and case remanded for further action consistent with the above.