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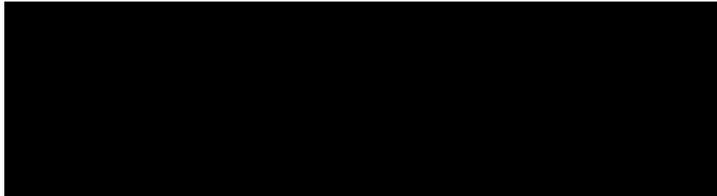
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: **APR 13 2010**
[EAC 08 046 83871]

IN RE: Applicant: [REDACTED]

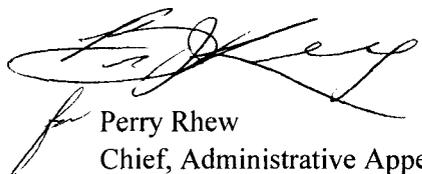
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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. The director also determined that the applicant failed to provide requested documentary evidence that [REDACTED] and [REDACTED] are one and the same.

On appeal, counsel for the applicant states that the director committed factual and legal error. Counsel also contends that the applicant has provided sufficient evidence to establish that [REDACTED] and [REDACTED] are one and the same.

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 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. 8 C.F.R. § 244.1.

The record reveals the following offenses:

- (1) On March 3, 1991, the applicant was arrested, in the name of [REDACTED] by the Los Angeles, California Police Department for Shoplifting.”
- (2) On February 28, 2002, the applicant was arrested, in the name of [REDACTED] by the Los Angeles, California Police Department for "Hit and Run Rnwy Veh, Prop Dam,' and “No Reg – Veh/Trailer/ Etc.”

Pursuant to a notice dated May 30, 2008, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant was also requested to provide proof that [REDACTED] and [REDACTED] are one and the same person. In response, the applicant submitted a letter from his counsel and copies of previously granted employment

authorization cards. The applicant also submitted letters stating that he had never been arrested and evidence that he had no criminal record.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on February 10, 2009.

On appeal, counsel states that the applicant has never been arrested and that he has provided sufficient evidence to establish that [REDACTED] and [REDACTED] are one and the same.

According to counsel, the applicant requested records from the Los Angeles Police Department and all record checks and requests came back with no arrests and/or no records found. However, the report actually states, "...there is no criminal history information meeting dissemination criteria pursuant to California law, on the above-named individual." The report from the State of California Department of Justice Bureau of Criminal Identification and Information clearly states that no criminal history **meeting dissemination criteria** was found (emphasis added). Consequently, it does not say no criminal information was found, but, that no criminal information was found that could be legally disclosed. In addition, it is noted that the individual is named [REDACTED] but the applicant was arrested under the name of [REDACTED] which may make a difference in finding a criminal record for the individual.

The applicant has failed to provide any evidence revealing the final court disposition of his arrests detailed above. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

In regards to proof of nationality and identity, counsel contends that the applicant has provided sufficient evidence to establish that [REDACTED] and [REDACTED] are one and the same. On appeal, counsel states that the applicant used the name [REDACTED] as an alias and while he was in removal proceedings he disclosed the fact that his true and correct name was [REDACTED]. However, when United States Citizenship and Immigration Services (USCIS) previously requested a copy of the applicant's identity document, the applicant provided a statement saying that the court had approved his name change. The applicant failed to provide the court documents validating the name and date of birth change. This discrepancy has not been satisfactorily explained. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant has provided insufficient evidence to establish his nationality and identity and that [REDACTED] and [REDACTED] are one and the same person. Therefore, the application must be denied on this basis as well.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for temporary protected status 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. The applicant has failed to meet this burden.



ORDER: The appeal is dismissed.