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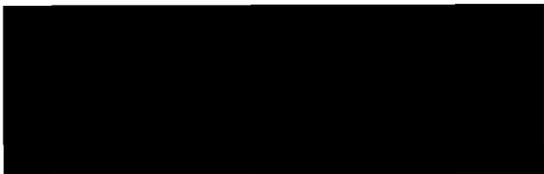
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: APR 27 2010

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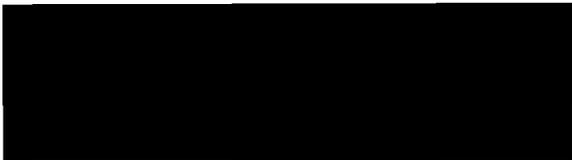
IN RE:

Applicant:



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.

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 (AAO) on appeal. The appeal will be sustained. The AAO will return the matter for further action by the director.

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 the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel asserts that the applicant was never arrested on January 31, 1986 and, therefore, he could not provide the court disposition.

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).

“Felony” means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

“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 FBI, via a fingerprint analysis, reports that on January 31, 2006, the applicant was arrested under the alias [REDACTED] by the Sheriff’s Office in Norwalk, California for grand theft of vehicle, a violation of section 487.3 PC.

On August 27, 2008, the director issued a Notice of Intent to Deny, which advised the applicant to submit certified court documents for the arrest on January 31, 1986. The applicant, in response, provided a letter dated September 11, 2008, from the Los Angeles County Superior Court indicating that indexes had been examined under the applicant’s true name, but no arrest was found. Counsel, on appeal, submits:

- A document dated February 8, 2008, from the State of California Department of Justice, indicating based upon a fingerprint search of records there is no criminal history information on the applicant.

- A letter dated April 21, 2009, from the Los Angeles County Sheriff's Department Headquarters, which indicates that the applicant had requested "a name only/non-fingerprint" search of its records and the department found a booking number [REDACTED] referencing an arrest under the alias [REDACTED] for violating section 487.3 PC on January 31, 2006. The reason for the applicant's release was unavailable.
- A letter dated April 22, 2009, from the Los Angeles Superior Court, indicating that indexes have been examined under both the applicant's true and alias names and no record was found.

Counsel's assertion that the applicant was never arrested in the state of California is without merit. The letter from the Los Angeles County Sheriff's Department corroborates the FBI report that an arrest occurred on January 31, 2006. Nevertheless, the applicant has provided primary evidence from relevant government authorities that serve as the custodians of records, indicating that no record of conviction exists. Therefore, the director's decision to deny the application will be withdrawn. However, the validity period of the applicant's fingerprint check has expired.

Accordingly, the case will be returned for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Following completion of this requirement, 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 the matter is returned for further action by the director.