



U.S. Citizenship
and Immigration
Services

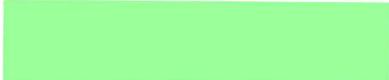
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DATE: **APR 24 2014**

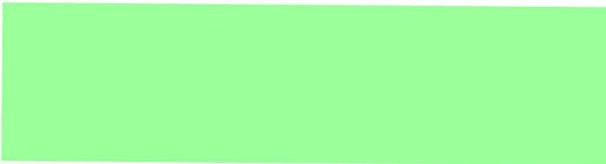
Office: CALIFORNIA SERVICE CENTER

FILE: 

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The application is now before the Administrative Appeals Office on appeal. The case will be remanded for further action and consideration.

The applicant claims to be a citizen of Honduras 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 she found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel submits a certified original letter dated April 26, 2013, from Los Angeles County Superior Court indicating that a thorough search of its record storage area and its microfiche indexing found no criminal record pertaining to an arrest in the applicant's name on April 24, 2004.

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).

"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 term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The record reveals the applicant's criminal history in the state of California as follows:

- On or about July 16, 1994, the applicant was arrested and subsequently charged with disorderly conduct – prostitution, a violation of section 647(b) PC, a misdemeanor. On August 12, 1994, the applicant pled *nolo contendere* to the offense. Imposition of sentence was suspended and the applicant was placed on probation for 12 months and ordered to pay a fine. Case no. [REDACTED]
- On January 19, 1997, the applicant was arrested and subsequently convicted of false information to a police officer, a violation of section 148.9(a) PC. On May 18, 2011, the conviction was vacated due to constitutional defect. Case no. [REDACTED]

- On April 24, 2004, the applicant was arrested by the Los Angeles Police Department for battery upon a spouse, a violation of section 243(e) PC, a misdemeanor. A pre-filing deferral was initiated.

On December 12, 2012, the applicant was requested to provide a detailed court transcript of the final disposition of the battery charge. The applicant, in response, submitted a photocopied document titled Certification – No Record dated December 21, 2012, from the court services assistant [REDACTED] of the Los Angeles County Superior Court, who indicated that no record relating to an arrest on April 24, 2004 in the applicant's name was found in its office.

The director, in denying the application, determined that the applicant had failed to submit sufficient evidence of the final court disposition of his arrest. The director noted that the court document did not reflect the outcome and any punishments that may have been imposed by the court.

Although the reports from the Federal Bureau of Investigation and the State of California Department of Justice indicate that pre-filing deferral was initiated, the current certified letter from the Los Angeles County Superior Court indicates, “[n]o criminal charges filed, City Attorney reject.” The applicant has provided sufficient evidence to overcome the sole basis for the denial of the application. Therefore, the decision of the director will be withdrawn.

However, the record reflects that the validity period of the applicant's fingerprint check has expired. Accordingly, the case will be 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).

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. §1361.

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