



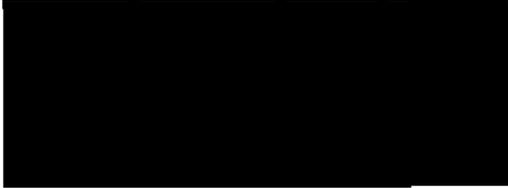
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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536



FILE: [REDACTED]
EAC 01 184 51400

Office: Vermont Service Center

Date: FEB 24 2003

IN RE: Applicant: [REDACTED]

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

IN BEHALF OF APPLICANT:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

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

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. 1254a.

The director determined that the applicant failed to submit court records of all his arrests as had been requested. The director, therefore, denied the application.

On appeal, counsel requests reconsideration because the director's request for disposition of the applicant's arrests was overlooked. He submits the applicant's arrest record.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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:
 - (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.

The term continuously resided as used in 8 C.F.R. § 244.1 means residing in the United States for the entire period specified in the regulations and since February 13, 2001.

The term continuously physically present as used in 8 C.F.R. § 244.1 means actual physical presence in the United States for the entire period specified in the regulations and since March 9, 2001.

Pursuant to section 244(c)(2)(B)(i) and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General finds that the alien has been convicted of any felony or two or more 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 felony or misdemeanor.

The Federal Bureau of Investigation (FBI) report, contained in the record of proceeding, reflects that on June 22, 1999 in New York, the applicant was charged with Count 1, criminal possession of a controlled substance (NYSPL 220.03), and Count 2, driving while intoxicated (NYSVTL 1192-2). The FBI report further reflects that the applicant was convicted of (1) creating dangerous act, (2) failure to stay in single lane, and (3) operating a motor vehicle while impaired by alcohol. The applicant was, therefore, requested on February 4, 2002, to submit the charging document and the court's final disposition of this arrest and any other arrests and charges against him. He was advised that the charge and disposition must be specifically identified (not just numeric citation or codes); if he was convicted of any charge, he must also provide evidence indicating whether the charge for which he was convicted was classified as a felony or a misdemeanor. He was further advised that he may submit a copy of the pertinent statute, sentencing guide, or statement from the court clerk or police department. Because the applicant failed to comply, the director denied the application.

On appeal, counsel submits a transcript record of the District Court of Nassau County, New York, reflecting that on December 6, 1999, the applicant was convicted of (1) driving while ability impaired, (2) disorderly conduct, (3) failure to drive within single lane, (4) driving while ability impaired, and (4) disorderly conduct. It is not clear from the record whether these convictions relate to the convictions listed in the FBI report (listed above). The applicant did not submit the arrest report or the court's final disposition of the charges listed in the FBI report.

Additionally, the applicant failed to comply with the director's request that if he was convicted of any charge, the charges and dispositions must be specifically identified (not just numeric citation or codes), and that he must also provide evidence indicating whether the charge for which he was convicted was classified as a felony or a misdemeanor.

Driving while ability impaired and disorderly conduct are misdemeanor offenses. The applicant is, therefore, ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his two or more misdemeanor convictions, and also based on his failure to submit additional evidence as requested. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States.

The burden of proof is upon the applicant to establish that he 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.