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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[Redacted]

File:

[Redacted]

Office: Texas Service Center

Date:

JAN 10 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: Self-represented

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, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal is sustained. The director's decision will be withdrawn and the matter will be remanded for further action.

The applicant is a native and citizen of El Salvador who indicated on his application that he entered the United States without a lawful admission or parole on November 27, 1991. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254, because the applicant failed to submit the requested court disposition for the arrest of July 1, 1994 in Lawrenceville, Georgia.

On appeal, the applicant submits the requested court disposition which reveals he has one misdemeanor conviction.

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,....

"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 that on July 1, 1994, the applicant was arrested by the police department in Lawrenceville, Georgia for battery. On appeal, the applicant provides the court disposition indicating that he was charged with one count of battery and two counts of simple battery. On July 8, 1994, the applicant pled nolo contendere to the battery charge. The applicant received a suspended sentence of 30 days in jail and was fined \$200. The remaining charges were not prosecuted. Case no.94D-2536-2.

Title 17, chapter 10, section 3 of the Georgia Criminal Procedure describes the criminal punishment for a misdemeanor as a fine not to exceed \$1,000 or confinement for a term not to exceed 12 months. The applicant's conviction is thus a misdemeanor offense.

The applicant also provides a letter dated June 24, 2002 from the Lawrenceville Police Department indicating that a criminal check in the applicant's name revealed no other criminal history in the state of Georgia.

The applicant submits a copy of his Georgia driver's license issued on January 10, 2002, a copy of his El Salvadoran passport and another copy of his child's birth certificate.

In a Notice of Intent to Deny and Revoke dated April 23, 2002, the director requested that the applicant submit evidence establishing his residence since December 30, 1998, and physical presence since January 15, 1999, in the United States. These dates for establishing continuous residence and physical presence are required for Honduran and Nicaraguan TPS applicants.

The applicant, however, indicates on his application that he is a native and citizen of El Salvador. Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001.

The application which was dated by the applicant on February 22, 2001 and fee registered by the Service on April 26, 2001, is within

the initial time-frame (March 9, 2001 to September 9, 2002) for individuals to apply for TPS offered to El Salvadorans.

The director may request any evidence deemed necessary to assist him with the determination of the applicant's eligibility for TPS offered to El Salvadorans. 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 appeal is sustained. The director's decision is withdrawn. The matter is remanded for further action.