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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: DEC 16 2004

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

Pursuant to section 244(c)(2)(B)(i) of the Act 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, now, the Secretary of the Department of Homeland Security (the Secretary), 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 record reflects the following:

1. On March 8, 2000, in the East Boston District Court, Massachusetts, Case No. [REDACTED] the applicant was indicted for assault and battery, in violation of code 265 § 13A, a misdemeanor. On May 17, 2000, the applicant was convicted of the offense, and he was placed on probation for a period of two years, concurrent with sentence imposed in Case No. [REDACTED]
2. On April 4, 2000, in the East Boston District Court, Massachusetts, Case No. [REDACTED] the applicant was indicted for Count 1, "abuse prevention order, violate," in violation of code [REDACTED] misdemeanor; and Count 2, "B&E nighttime for felony," in violation of code 266 §16. On May 17, 2000, the applicant was convicted of Count 1, and he was placed on probation for a period of two years. The final disposition as to Count 2 is not clear from the court record; a hand written notation was entered: [REDACTED] on file without a change of plea."

Accordingly, the applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his record of at least two misdemeanor convictions. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.