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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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DEC 17 2004

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

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:

[Redacted]

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

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office 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. § 1254.

The director determined that the applicant was ineligible for TPS because he had been convicted of two misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, counsel states that the applicant admits to having been convicted of two misdemeanors, but asserts that in the nearly four years since the second misdemeanor conviction, the applicant has been rehabilitated. He further states that the applicant participated in and completed the mandated outpatient alcohol treatment program, he has completely reformed his behavior, and is remorseful for his conduct. Counsel submits statements from individuals attesting to the applicant's rehabilitation, reformation, and remorse.

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.

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. The record shows that on November 29, 1999, in the First District Court, County of Suffolk, New York, Docket No. [REDACTED] (arrest date November 28, 1999), the applicant was indicted for Count 1, operating a motor vehicle under the influence of alcohol or drugs, VTL 1192.3, a misdemeanor; and Count 2, VTL 1192.2, operating a motor vehicle while under the influence of drug or alcohol (.10 of one per centum or more by weight of alcohol in the blood), a misdemeanor. The applicant submits a letter from [REDACTED] of the Nassau County Probation Department, indicating that on June 19, 2000, the applicant "was placed on probation for DWI and Aggravated Unlicensed Operation of a Motor Vehicle 2nd. He was sentenced to 3 years probation along with alcohol therapy..." The applicant, however, failed to submit the complete, actual court disposition of this arrest.
2. The Federal Bureau of Investigation (FBI) fingerprint results report shows that that October 29, 1997, in Yaphank, New York, the applicant was arrested and charged with operating a motor vehicle while impaired by alcohol, a misdemeanor. The FBI report shows that the applicant was convicted of this offense. However, the actual court disposition of this offense is not contained in the record.

While it appears that the applicant was convicted of at least three misdemeanors committed in the United States, the applicant has failed to submit the complete court dispositions of all his arrests as requested by the director on August 9, 2002. The applicant is, therefore, ineligible for TPS based on his failure to submit the complete, actual court dispositions of all his arrests.

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.