



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

OCT 26 2004

IN RE:

Applicant:

[REDACTED]

APPLICATION:

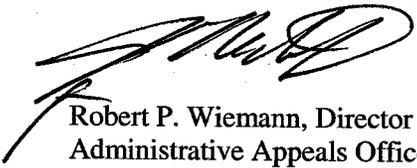
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. 1254

ON BEHALF OF APPLICANT:

[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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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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 failed to submit the final dispositions of all her arrests, including her arrest on January 30, 2000 for assault. The director, therefore, denied the application.

On appeal, counsel asserts that the information requested was not available at the time that it had to be submitted, and the information is still not available. She states that the applicant failed to appear in court on the date of the hearing, and the court issued a "capias" against her. Counsel further states that the applicant was finally arraigned in court on March 3, 2003, and that subsequent to her scheduled hearing on April 24, 2003, the final disposition of the case will be available. She submits additional evidence.

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. On October 10, 1999, in Fairfax County, Virginia, Case No. [REDACTED] the applicant was arrested and charged with assault and battery on a family or household member, in violation of section 18.2-57.2, a misdemeanor. On February 22, 2000, the applicant was convicted of the crime, and she was fined \$400, \$300 suspended.

2. Counsel submits a copy of a "Capias" for the arrest of the applicant for failure to appear in court on March 9, 2000. The court record reflects that the applicant was arraigned on March 18, 2003, in Fairfax County, Virginia, Case No. [REDACTED] for her failure to appear on March 9, 2000, for the charge of assault and battery. The record does not reflect whether the applicant was convicted of the offense of failure to appear, a misdemeanor.

3. On January 30, 2000, in Fairfax County, Virginia, the applicant was arrested and charged with assault and battery on a family member. While counsel, on appeal, states that a hearing for this offense was scheduled for April 24, 2003, to date, no court disposition has been furnished.

Accordingly, the applicant is ineligible for TPS based on her failure to submit final court dispositions of her arrests. The director's decision to deny the application will be affirmed.

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