



U.S. Citizenship
and Immigration
Services



FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

OCT 28 2004

IN RE:

Applicant:



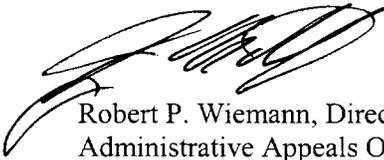
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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

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DISCUSSION: The application was denied by the Director, California 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 asserts that the "record obtained by the service does not reflect the current status and disposition of the arrest." While counsel indicates that he is sending a brief and/or evidence to the AAO within 30 days, the file contains no further response from the applicant. Therefore, the record shall be considered complete.

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 January 19, 1997, in Los Angeles, California, the applicant was arrested and charged with Count 1, 456 PC, burglary, a misdemeanor; Count 2, 484(a) PC, theft of property, a misdemeanor; Count 3, 466 PC, possess burglary tools, a misdemeanor; and Count 4, 10852 VC, tampering with vehicle, a misdemeanor. On February 18, 1997, in the Municipal Court of Los Angeles, Van Nuys Judicial District, County of Los Angeles, Case No. [REDACTED] the applicant was convicted of Count 4. He was placed on probation for a period of 24 months, ordered to spend 4 days in the county jail or perform 10 days of "Cal Trans," and pay restitution fee in the amount of \$100. Counts 1, 2, and 3 were dismissed.
2. On May 13, 2000, in Los Angeles, California, the applicant was arrested and charged with Count 1, 417(a)(1) PC, exhibit deadly weapon other than firearm, a misdemeanor; and Count 2, 422 PC, making a terrorist threat, a misdemeanor. On June 8, 2000, in the Municipal Court of Los Angeles, Van Nuys Judicial District, County of Los Angeles, Case No. [REDACTED] the applicant was convicted of Count 2. He was placed on probation for a period of 24 months, ordered to pay a total of \$188 in restitution fine and court costs, and perform 30 days of "Cal Trans." Count 1 was dismissed.

Counsel's assertion, on appeal, that the record obtained by Citizenship and Immigration Services (CIS) does not reflect the current status and disposition of the applicant's arrest is without merit. The court records of the applicant's convictions, contained in the record of proceeding, were not obtained by CIS but, rather, were furnished by the applicant in response to the director's request for additional evidence on November 22, 2003. The court records clearly show that the applicant was convicted of the crimes listed in Nos. 1 and 2 above.

Accordingly, the applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his 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.