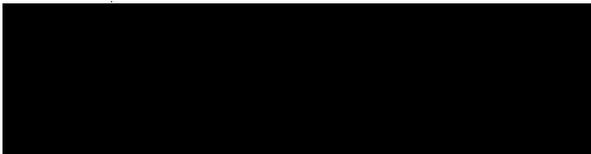




U.S. Citizenship
and Immigration
Services



FILE:



Office: TEXAS SERVICE CENTER Date:

SEP 08 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:

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

Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

DISCUSSION: The application was denied by the Director, Texas 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 had failed to submit the final court dispositions of his arrests, including a charge for possession of a bad check on March 26, 1994. The director, therefore, denied the application.

On appeal, the applicant states that he did submit a "Plea Bargain Agreement" on the matter in question; however, a final disposition is not available until he pays his court costs.

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 February 3, 1996, in South Pasadena, California, the applicant was stopped by an officer for violation of VC 24002(a), "unsafe vehicle, carrying 8 passengers." A traffic check revealed that the applicant had an outstanding misdemeanor warrant (Warrant #MSB08576) from San Bernardino Court, California, for possession of fictitious instruments, in violation of PC 476. Based on a plea bargain agreement, on October 29, 2002, the applicant entered a plea of guilty to "willfully violating written promise to appear," in violation of PC 853.7. The court convicted the applicant of an infraction, and ordered the applicant to pay \$316 in fines and court costs. It is noted that "willfully violating written promise to appear," in violation of PC 853.7, is classified as a misdemeanor. The court dismissed "all other counts."

The Florida Criminal History report, contained in the record of proceeding, reflects the following:

2. The applicant was arrested on November 1, 1997, in Tampa, Florida, and charged with "resisting or obstructing officer without violence," a misdemeanor. The criminal history report reflects that on November 26, 1997, the applicant entered a plea of guilty to the offense. He was placed on probation for a period of 6 months, and ordered to pay \$106 in court costs. The final court disposition of this arrest, however, is not contained in the record.

3. The applicant was arrested on November 1, 1997, in Tampa, Florida, and charged with "operating motor vehicle with expired license," a misdemeanor. The criminal history report reflects that the applicant entered a plea of guilty to the offense, and was placed on probation for a period of 6 months. The final court disposition of this arrest also is not contained in the record.

While it appears that the applicant was convicted of at least two misdemeanor offenses committed in the United States, the applicant, however, failed to submit final court dispositions of all arrests, including the arrests and/or convictions listed in Nos. 2 and 3 above. The applicant is, therefore, ineligible for TPS based on his failure to comply to the director's request to submit the final court dispositions of all his arrests. Accordingly, the director's decision to deny the TPS application will be affirmed.

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.