



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: 10/27/2012

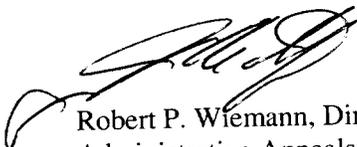
IN RE: Applicant: [Redacted]

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

VERMONT SERVICE CENTER
10/27/2012

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 makes a statement and submits the court's final dispositions of the applicant's arrests.

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 18, 1995, in the District Court of the County of Suffolk, New York, Docket No. [REDACTED] (arrest date December 5, 1993), the applicant pled guilty to menacing, in violation of New York Penal Law 120.14, a misdemeanor. He was placed on probation for a period of 3 years.
2. On October 25, 1999, in the District Court of the County of Suffolk, New York, Docket No. [REDACTED] (arrest date April 23, 1999), the applicant pled guilty to operating a motor vehicle under influence of drug or alcohol, in violation of VTL 1192.3, a misdemeanor. The applicant was placed on probation for a period of 3 years, fined \$500, and his driver's license was revoked for 6 months.

Counsel, on appeal, asserts that 8 C.F.R. § 244.4(a) requires a conviction in order for an alien to be found ineligible for TPS, and that the applicant was not convicted of the two misdemeanor offenses. Rather, the applicant pled guilty to these charges under poor guidance from legal aid attorneys and without regard to consequences when it comes to immigration benefits. Counsel states that in both charges, the applicant did not appear to have served any time in jail; rather, he received probation and paid fines. Counsel's assertions are without merit. Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines the term "conviction:"

(48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where --

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

Accordingly, the applicant had been convicted of the two misdemeanor offenses within the meaning of section 101(a)(48)(A) of the Act. Furthermore, the applicant subsequently furnished, with his TPS re-registration, additional court documents for the following offenses:

3. On September 9, 1993, in the District Court of the County of Suffolk, New York, Docket No. [REDACTED] the applicant pled guilty to disorderly conduct, in violation of PL 240.20. He was sentenced to 15 days in jail and fined \$250.
4. On September 9, 1993, in the District Court of the County of Suffolk, New York, Docket No. [REDACTED] the applicant pled guilty to harassment in the first degree, in violation of PL 240.25, a misdemeanor. He was sentenced to 15 days in jail and fined \$250.
5. On June 29, 1994, in the District Court of the County of Suffolk, New York, Docket No. [REDACTED] the applicant pled guilty to disorderly conduct, in violation of PL 240.20. He was sentenced to "unconditional discharge."

Although PL 240.20, disorderly conduct (Nos. 3 and 5 above), is classified a violation, according to section 10.00(3) of the New York State Penal Law, "violation" means an offense for which a sentence to a term of imprisonment in excess of fifteen days cannot be imposed. Consequently, the offense of disorderly conduct is a misdemeanor as defined by 8 C.F.R. § 244.1

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