



U.S. Citizenship
and Immigration
Services

M1

[REDACTED]

FILE: [REDACTED]
[EAC 02 228 53694]

OFFICE: VERMONT SERVICE CENTER DATE:

APR 22 2014

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
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 sustained and the application will be approved.

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 denied the application because the applicant had been convicted of two or more misdemeanors committed in the United States.

On appeal, counsel submits a statement.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more

misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

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 misdemeanor.

The record reveals the following offenses:

- (1) On February 27, 2002, in Stratford Municipal Court, Stratford, New Jersey, Summons No. [REDACTED] (arrest date November 2, 2001), the applicant was convicted of unsworn falsification to authorities, NJS 2C:28-3.b(3). He was ordered to pay \$338.50 in fines and costs.
- (2) On February 27, 2002, in Stratford Municipal Court, Stratford, New Jersey, Summons No. [REDACTED] (arrest date November 2, 2001), the applicant was convicted of failure to wear seat equipment, NJS 39:3-76.2f. He was ordered to pay \$44 in fines and costs.
- (3) On February 27, 2002, in Stratford Municipal Court, Stratford, New Jersey, Summons No. [REDACTED] (arrest date November 2, 2001), the applicant was convicted of failure to possess driver's license, NJS 39:3-29. He was ordered to pay \$50 in fines and costs.
- (4) On February 27, 2002, in Stratford Municipal Court, Stratford, New Jersey, Summons No. [REDACTED] (arrest date November 2, 2001), the applicant was convicted of failure to possess driver's license, NJS 39:3-29. He was ordered to pay \$338.50 in fines and costs.
- (5) On February 27, 2002, in Stratford Municipal Court, Stratford, New Jersey, Summons No. [REDACTED] (arrest date November 2, 2001), the applicant was convicted of failure to stay within a marked lane, NJS 39:4-88.b. He was ordered to pay fines and costs.

On appeal, counsel asserts that, with the exception to one offense, all of the applicant's guilty pleas are for traffic offenses under Title 39 of the New Jersey Statutes. Counsel further asserts that the applicant's one

offense, under Title 2C of the statute, is a disorderly persons offense, and may not even rise to the level of misdemeanor offense.

New Jersey Statute 2C:28-3.b(3), detailed in No. 1 above, indicates that this offense is a disorderly persons offense. However, NJS 2C:43-8 states, in part:

A person who has been convicted of a disorderly persons offense or a petty disorderly persons offense may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall not exceed 6 months in the case of a disorderly persons offense or 30 days in the case of a petty disorderly persons offense.

Because the applicant was convicted of an offense for which he could have received a jail sentence of more than five days, he has, for immigration purposes, been convicted of a misdemeanor (No. 1 above). 8 C.F.R. § 244.1. However, counsel is correct in his assertion that Nos. 2, 3, 4, and 5 above are traffic infractions, as these offenses are punishable by fines only.

The applicant's single misdemeanor conviction does not render him ineligible for TPS pursuant to section 244(c)(2)(B)(i) of the Act. Since the applicant has overcome the director's sole reason for denial of the application, the decision of the director will be withdrawn.

The applicant has submitted sufficient evidence to establish that he has met the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Therefore, the appeal will be sustained and the application will be approved.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this burden.

ORDER: The appeal is sustained and the application is approved.