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U.S. Citizenship
and Immigration
Services

MI



FILE: [REDACTED]
[SRC 02 252 54165]

OFFICE: TEXAS SERVICE CENTER

DATE: DEC 05 2005

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

DISCUSSION: The application was denied by the Director, Texas Service Center. The application is now before the Administrative Appeals Office on appeal. The case will be remanded for further consideration and action.

The applicant claims to be 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 she found the applicant failed to submit certified final court dispositions for the criminal charges in his record.

On appeal, the applicant provides a statement and additional evidence.

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 7, 2004, the applicant, under the name of [REDACTED], and given date of birth as February 4, 1980, was arrested by the Police Department, Calhoun, Georgia, and was charged with:
CHARGE 1: DRIVING WHILE LICENSE SUSPENDED/REVOKED -/MISD/-
CHARGE 2: FLEEING/ATTEMPTING TO ELUDE OFFICER -/MISD/-.

Pursuant to a letter dated August 18, 2004, the applicant was requested to submit the certified final court disposition for the charges detailed above, and any other charges brought against him, police clearance letters, and, any other evidence that would indicate that he has not been convicted of any crimes or sentenced to more than five days. The applicant was also requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. In addition, the applicant was requested to submit government-issued photo identification.

It is noted that the director had previously requested on January 28, 2003, that the applicant submit photo identification, or a national identity document from his country of origin bearing a photograph and/or fingerprint, and had also, on December 8, 2003, previously requested that the applicant submit additional evidence of his continuous residence in the United States during the requisite period, photo identification, and evidence of his nationality.

In response, the applicant submitted photocopies of: an El Salvadoran birth certificate issued on January 6, 2001, with English translation; and, three pay stubs dated in February, March and April of 2002, from [REDACTED] of an unspecified location. The applicant failed to provide final court dispositions for the charges indicated above.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on September 30, 2004.

On appeal, the applicant states that he could not obtain the court dispositions until the date of the appeal. He states that he believes that with the submission of these documents he qualifies for TPS benefits. In support of the appeal, the applicant submits two certified dispositions from the Calhoun Municipal Court, City of Calhoun, Georgia. The disposition for Case Number [REDACTED], Docket [REDACTED], indicates for the violation number [REDACTED] Fleeing/Attempting to Elude Police, the case was closed on March 16, 2004, with the finding that the charge was merged with Case [REDACTED]. The disposition for Case Number [REDACTED], Docket [REDACTED], indicates that for the violation number [REDACTED] "Suspended/Revoked License (2nd)," the case was closed on March 16, 2004, with a plea and finding of guilt, and the imposition of a fine with no sentence of probation or confinement.

Because the charges and findings were merged, the record indicates that the applicant has been convicted of only one misdemeanor, and is, therefore, not ineligible for TPS due to his criminal record discussed above. 8 C.F.R. § 244.4(a). Consequently, the applicant has overcome the only reason stated in the director's decision denying his TPS application. Nevertheless, the application may not be approved at this time.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The pay stubs are dated for only three months in the year 2002, and do not contain any verifiable information about the company or the applicant. Therefore, the pay stubs have little evidentiary value. The applicant has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c).

In addition, despite multiple requests for photo identification and the applicant's national identity document from his country of origin bearing a fingerprint and/or photograph, the applicant has failed to comply with this request. The submitted birth register issued in 2001, with English translation, alone, is insufficient to establish his nationality and identity. It is also noted that the Federal Bureau of Investigation (FBI) fingerprint results report indicates the applicant's place of birth as "Mexico." It is unclear whether the applicant gave this information at the time of his 2004 arrest. The applicant has not submitted sufficient evidence to conclusively establish his identity and nationality.

Therefore, the application will be remanded to the director for further consideration and action. The director may request any evidence deemed necessary to determine the applicant's eligibility for TPS.

As always, 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. Here, that burden has not been met.

ORDER: The case is remanded for further consideration and action.