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U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: JUL 01 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, Director
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 initially denied the application on April 11, 2003, after determining that the applicant had abandoned his application by failing to appear to be fingerprinted.

On April 30, 2003, the applicant filed a motion to reopen the matter. On motion, the applicant stated that he never received the fingerprint notice because the notice was sent to the wrong address.

On July 30, 2003, the applicant was afforded another opportunity to be fingerprinted. The Federal Bureau of Investigation (FBI) Identification record contained in the record revealed that the applicant was arrested on October 20, 1995, in Arlington, Virginia, and charged with "Narcotic Cocaine-Sell."

The director determined that the applicant had been convicted of a felony in the United States. The director, therefore, denied the application again on August 14, 2003.

The applicant appears to be represented; however, the representative has not submitted a properly filed Form G-28, Notice of Entry of Appearance as Attorney or Representative. Therefore, the decision will be furnished only to the applicant.

On appeal, the applicant states that he was only convicted of one misdemeanor and is, therefore, eligible for TPS.

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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a

State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals that the applicant was arrested in Arlington, Virginia on October 20, 1995, for a violation of Virginia Criminal Code § 18.2-248, Manufacture, Sell, Give, or distribute a Controlled substance or Imitation Controlled Substance namely Cocaine, a felony. On February 23, 1996, the applicant was convicted in the Arlington General District Court, Arlington, Virginia of a reduced charge of possession of paraphernalia, a misdemeanor.

The director denied the application, determining that the applicant had been convicted of a felony.

On appeal, the applicant states that he was only convicted of one misdemeanor, and is, therefore, eligible for TPS. The applicant resubmits court documents indicating he was convicted of possession of paraphernalia, a misdemeanor.

The applicant was convicted of a single misdemeanor and the director's finding that the applicant had been convicted of a felony will be withdrawn. However, since this conviction is drug-related, the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(ii) of the Act. There is no waiver available for inadmissibility under this section of the Act.

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 failed to meet this burden.

ORDER: The appeal is dismissed.