



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent disclosure of warrant
invasion of personal privacy

PUBLIC COPY



M

JUN 06 2005

FILE:

[REDACTED]
[EAC 02 265 52571]

OFFICE: VERMONT SERVICE CENTER

DATE:

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:

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.


for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The application 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 or more misdemeanor offenses committed in the United States.

On appeal, the applicant states that he knows how guilty he is.

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 in Virginia:

1. On September 15, 2001, the applicant was arrested and charged with 1- Hit and Run- Personal Injury, Attended Property. On December 12, 2001, the applicant, in violation of Section 46.2-894, was convicted of a misdemeanor and received a jail sentence of 10 months.
2. On September 15, 2001, the applicant was arrested for operating a motor vehicle while having a blood alcohol concentration of 0.08 percent or more, or while under the influence of alcohol. On December 12, 2001, the applicant, in violation of Section 18.2-266, was convicted of a misdemeanor and received a jail sentence of 11 months imposed with an 11 month suspended sentence conditioned upon good behavior and keeping the peace, and paying fines and costs. A \$300.00 fine was imposed.

On appeal, the applicant states, in pertinent part, the following:

This is in order to inform you that I had run for a problem the past year (traffic accident and DWI charges) I do know from the bottom of my hart [sic] how guilty am I. At that time I had hired a legal counselor to defend me but he did not act properly therefore I got such sentence while others with worse or perhaps with similar cases like mine weren't.

I had been sentence to 10 months which it had been reduced (I had summit [sic] evidences to you already) to 5 months due [sic] my good behavior.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, as detailed above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application will be affirmed.

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.