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U.S. Citizenship  
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Services

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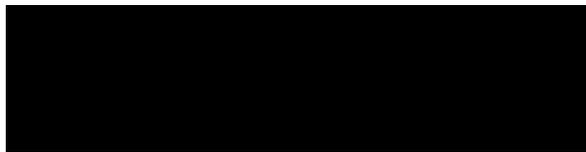


FILE: [REDACTED]  
[EAC 02 247 51987]

OFFICE: Vermont Service Center

DATE: JUN 10 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.

  
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 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 the applicant failed to submit requested court documentation relating to his criminal record. The director also denied the application because the applicant failed to respond to a request for evidence to establish his continuous residence and continuous physical presence in the United States during the requisite periods. Therefore, the grounds of denial had not been overcome.

On appeal, the applicant provides a statement regarding the director's request and submits additional evidence in support of his claim of eligibility 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.  
8 C.F.R. § 244.1.

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.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The record reveals that on April 14, 2001, the applicant was arrested and charged by the Falls Church Police Department with Possession of Schedule I, II Controlled Substance.

Pursuant to a letter dated July 3, 2003, the applicant was requested to submit the final court disposition for the charge detailed above. The applicant was also requested to submit whether the charge, if convicted, was classified as a felony or misdemeanor. The applicant was also requested to submit evidence establishing his continuous residence in the United States as of February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the date of filing his application. The applicant did not respond to the director's request; therefore, the director determined that the applicant had failed to establish his eligibility for TPS and denied the application on August 19, 2003.

On appeal, the applicant states that he did not reply to the director's July 3, 2003 request because it had been misplaced. The applicant further states that he has now located the director's request and submits a copy along with his appeal. The applicant also provides, on appeal, the following documentation in support of his eligibility for TPS: a copy of his Virginia State Identification Card issued on September 29, 2001; a report from Consolidated Waterproofing, Inc. regarding payments made to his 401(k) Plan reflecting a hire date of April 19, 2000; copies of his earnings statements reflecting pay periods from March 25, 2001 to March 31, 2001, June 3, 2001 to June 9, 2001, August 19, 2001 to October 6, 2001, December 15, 2002 to December 21, 2002, and August 3, 2003 to August 9, 2003; a copy of his boarding pass for American Airlines reflecting a date of issue of April 12, 2000; copies of earning statements from Consolidated Waterproofing Contractors, Inc. reflecting a pay period from October 1, 2000 to October 7, 2000.

A review of the record of proceedings reflects that the Service also received additional evidence on August 25, 2003, in a response to the director's July 3, 2003; however, this documentation was received after the director denied the application on August 19, 2003, however, before the applicant filed his appeal. Nevertheless, it will be considered as part of the record in these proceedings. The documentation received on August 25, 2003 contains the following evidence: earnings statements from Consolidated Waterproofing Contractors, Incorporated, reflecting pay periods of February 11, 2001 to February 17, 2001, July 14, 2002 to July 20, 2002, and July 29, 2003 to July 26, 2003; a Customer Receipt from Bank of America dated August 4, 2003; a letter dated July 2003, from Mr. [REDACTED] Senior Medical Director of CareFirst BlueChoice, regarding a survey to improve health plan operations; and copies of a Sentencing Order dated October 10, 2001, from the Circuit Court of Arlington County, Virginia, in regards to the applicant's arrest on April 14, 2002, for Possession of Cocaine.

A review of the Sentencing Order reflects that the applicant entered a plea of guilty to the charge of Possession of Cocaine and was sentenced to 6 months incarceration with the Arlington County Adult Detention Facility. The applicant has been convicted of Possession of Cocaine, a ground of inadmissibility under Section 212(a)(2)(A)(i)(II) of the Act as it relates to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). The applicant is ineligible for TPS because he is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) of the Act, based on his drug-related conviction. Section 244(c)(1)(A)(iii) of the Act. Further, there is no waiver available to an alien found inadmissible under this section. See 8 C.F.R. § 244.3(c)(1). Consequently, the director's decision to deny the application will be affirmed.

The other issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, to the date of filing his application.

The record of proceedings also contains the applicant's earnings statement from Consolidated Waterproofing Contractors, Inc. reflecting earnings for the pay period from December 31, 2000 to January 6, 2001. A review of the evidence submitted by the applicant establishes that he has met the continuous residence and continuous physical presence requirements for TPS; however, as mentioned previously, the applicant is not eligible for TPS because he is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) of the Act, based on his drug-related conviction. Section 244(c)(1)(A)(iii) 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.