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U.S. Citizenship
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FILE: [REDACTED]
[EAC 03 073 53499]

OFFICE: Vermont Service Center

DATE: JUN 24 2005

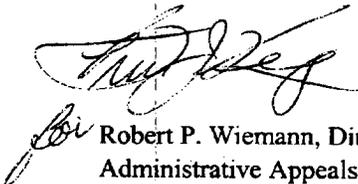
IN RE: Applicant: [REDACTED]

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.


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 had failed to provide the court dispositions of the charges relating to his criminal record.

On appeal, the applicant submits documentation in support of his 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.
- (g) Has filed an application for late registration with the appropriate Service director, within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on October 7, 2002.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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 the applicant was arrested for the following offenses:

- (1) On June 27, 1999, the applicant was arrested by the Fairfax County Police for Assault & Battery – Family Member and Assault & Battery; and,
- (2) On August 8, 2002, the applicant was arrested by the Howard County Police Department for Fail Obey Renble/Lawfl, under the name of [REDACTED]

On March 31, 2003, the applicant was requested to submit evidence establishing his continuous residence in the United States from February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, to the date of filing his application. The applicant responded to the director's request on April 21, 2003, and submitted some evidence in an attempt to establish his continuous residence and continuous physical presence in the United States during the requisite time periods.

On August 14, 2003, the applicant was requested to submit the final court disposition for the charges as detailed above. In addition, if convicted, the applicant was requested to provide evidence showing whether the charge was classified as a felony or misdemeanor. The applicant was also requested to submit evidence establishing his continuous residence in the United States from December 30, 1998, and his continuous physical presence in the United States since January 5, 1999, to the date of filing his application. It is noted that the director erred in the continuous residence and continuous physical presence dates; however, the director's March 31, 2003 request did specify the correct dates for continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant responded to the director's August 14, 2003 request and provided some evidence pertaining to his continuous residence and continuous physical presence in the United States, and a criminal record check dated September 3, 2003, from the Fairfax County Police Department criminal record check regarding his past arrest on June 27, 1999 and the dispositions for each charge. The criminal record check indicates that the applicant was arrested on three charges; however, two of the charges do not indicate the final court dispositions. The director, therefore, determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on January 15, 2004. The director

also noted that the applicant did not provide documentation relating to his arrest on August 8, 2002, by the Howard County Police Department in Ellicott City, Maryland.

On appeal, the applicant provides a true test copy of the results of a criminal history inquiry dated February 2, 2004, indicating that no record was found under the name [REDACTED]

A review of the document submitted by the applicant on appeal reflects that the criminal history inquiry was conducted only on the name of [REDACTED]. However, according to the Federal Bureau of Investigation Identification Record transmitted to the Service, the applicant had used the name of [REDACTED] in relation to his arrest by the Howard County Police Department on August 8, 2002, for Fail Obey Renble/Lawfl. It is further noted that the document submitted by the applicant does not reflect the location of the district court from which the information was obtained. The applicant has failed to provide evidence revealing the final court disposition of his past arrest as detailed above. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Therefore, the director's decision to deny the application for TPS on this ground is affirmed.

Beyond the decision of the director, a review of the record reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on October 7, 2002, after the initial registration period had closed.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

The record does not contain any evidence to establish that the applicant has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, the application will also be denied for this reason.

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.