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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

M1

FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: MAR 20 2011

[EAC 01 194 55029]

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:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and 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 denied the application because the applicant had been convicted of two misdemeanors committed in the United States.

On appeal, counsel submits 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 November 6, 1992, in Suffolk County District Court, New York, Docket No. [REDACTED] (arrest date November 30, 1991), the applicant was convicted of driving while ability impaired, VTL 1192.1. He was ordered to serve time in jail, placed on probation for a period of 3 years, and his license was suspended for 90 days.
- (2) On November 6, 1992, in Suffolk County District Court, New York, Case [REDACTED] (arrest date March 13, 1992), the applicant was convicted of (1) operating a motorcycle without registration [Docket No. [REDACTED] VTL 410; and (2) driving while intoxicated [Docket No. [REDACTED] VTL 1192.2, a misdemeanor. He was ordered to serve time in jail as to both charges.
- (3) On December 20, 1993, in Suffolk County District Court, New York, Docket No. [REDACTED] the applicant was convicted of patronizing a prostitute, 230.03 PL, a class B misdemeanor. He sentenced to serve 60 days in jail.
- (4) On January 13, 1998, in Suffolk County District Court, New York, Docket No. [REDACTED] the applicant was convicted of aggravated unlicensed operation of a motor vehicle in the third degree, VTL 511.1.

On appeal, counsel asserts that although the applicant was initially charged with misdemeanor offenses, the charges were dismissed or reduced. He further asserts that the offense of VTL 1192.1 is a traffic infraction.

Although New York VTL 1193.1 states that driving while ability impaired (VTL 1192.1) shall be a traffic infraction, VTL 1193.1 further states that this crime "shall be punishable by a fine of not less than three hundred dollars nor more than five hundred dollars or by **imprisonment in a penitentiary or county jail for not more than fifteen days**, or by both such fine and imprisonment." (Emphasis added.) Therefore, for immigration purposes, VTL 1192.1 is a misdemeanor as defined in 8 C.F.R. § 244.1.

The applicant is ineligible for TPS due to his record of at least four misdemeanors, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

The Federal Bureau of Investigation report shows that the applicant was apprehended at McAllen, Texas, on May 13, 1989, and he was subsequently placed in removal proceedings (File No. [REDACTED]).

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.