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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



M1

FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: MAR 28 2005

[EAC 01 176 52013]

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.

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 determined that the applicant had failed to submit the requested final court dispositions of the criminal offenses committed. The director, therefore, denied the application.

On appeal, the applicant 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.

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.

The Federal Bureau of Investigation fingerprint results report reveals the following offenses:

- (1) On July 4, 1990, in Baltimore, Maryland, the applicant was arrested for Count 1, assault-strongarm; Count 2, assault-threat to shoot with a firearm; Count 3, "HNDGUN DID CARRY/WEAR TRANSP AS PROH W/O PERM;" and Count 4, assault-strongarm-common law.
- (2) On July 28, 2000, in Baltimore, Maryland, the applicant was arrested for failure to appear.

Pursuant to a letter dated February 1, 2002, the applicant was requested to submit the final court disposition of every charge against him, including the final disposition for each of the charges detailed in Nos. 1 and 2 above. In response, the applicant failed to submit the requested final court dispositions.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on September 18, 2002.

On appeal, the applicant asserts that while it is true that he was arrested, he was not convicted of any crimes. He subsequently submits the State of Maryland Criminal Justice Information System (CJIS) relating to the applicant's arrests detailed in Nos. 1 and 2 above, and a letter from the Maryland Department of Public Safety and Correctional Services indicating that the search of the criminal history record was obtained from information maintained by the Maryland CJIS, and that it is possible that conviction or non-conviction data prior to 1978 may not be contained on CJIS.

It is noted that the criminal charges against the applicant listed in the CJIS report are different from those listed in the FBI report. Further, the CJIS report is not a court document obtained from the courts where the hearings took place.

The applicant has failed to provide the final court disposition of every charge against him as required by the director. 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).

The FBI report shows that another file, [REDACTED] was created for the applicant on June 19, 1989, in Baltimore, Maryland, based on the applicant's entry into the United States without inspection.

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.