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



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: MAY 10 2005
[EAC 01:171 54360]
[REDACTED]

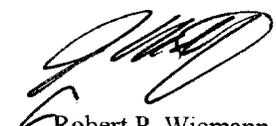
IN RE: Applicant: [REDACTED]

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, and is now before the Administrative Appeals Office (AAO) 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 determined that the applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act due to a drug-related conviction.

It is noted that there is a properly completed Form G-28, Notice of Entry of Appearance of Attorney or Representative, dated August 8, 2003, contained in the record of proceeding. However, on appeal, counsel states that, as of October 24, 2003, she will no longer be representing the applicant, and that any further correspondence should be mailed directly to him (the applicant). Therefore, the applicant is considered as self-represented in this matter.

On appeal, the applicant's former counsel submits a brief.

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, 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.

The record reveals that the applicant was convicted of the following offenses occurring in the Province of Ontario, Canada:

- (1) On December 15, 1992, of conspiracy to commit an indictable offense, for which he received a fine of \$400/10 days in jail (ref: Durham Reg PS 63777).
- (2) On December 15, 1992, of failure to appear, for which he received a fine of \$300/10 days in jail (ref: Durham Reg PS 63777).

- (3) On July 12, 1993, of communicating for the purposes of prostitution, for which he received a fine of \$300/15 days in jail (ref Metro Toronto PF [REDACTED])
- (4) On September 27, 1993, of possession of a narcotic, for which he received a fine of \$350 (ref: Metro Toronto PF [REDACTED])
- (5) On July 14, 1994, of false statement, for which he received a sentence of 30 days (ref: RCMP Milton I&P Section 0-3480).

On July 21, 2003, the director denied the applicant's Form I-821, Application for Temporary Protected Status, due to the conviction detailed in No. 4, above.

On appeal, the applicant's prior counsel states that the applicant never received the director's decision denying his application. However, the record reflects that the director's denial of the application was forwarded to the applicant at his address of record.

Based on a review of the record, it is concluded that the applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction (No. 4, above). Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. Therefore, the application may also not be approved for these reasons.

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.