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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:

MAY 10 2005

[EAC 01 200 56721]

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.

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 denied the application because he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant submits a brief statement and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under § 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.

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 applicant filed his initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on May 24, 2001. At the time of filing his application, the applicant indicated that he had been arrested for trespassing in 1999.

On February 19, 2003, the director requested the applicant to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant was also requested to submit a final court disposition of his 1999 arrest.

In response to the director's request, the applicant submitted documentation relating to his residence and physical presence in the United States. He also submitted a photocopy of his driver history record check from the Virginia Department of Motor Vehicles (DMV), dated May 5, 2002. The record indicated that the applicant had been convicted of criminal offenses on at least six different occasions from 1996 through 1999.

While the director determined that the applicant had submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods, the director denied the application, on April 28, 2003, for failure to provide the final court dispositions of the

applicant's trespassing arrest in 1999, as well as for his other convictions as listed in the driver history check from the Virginia DMV.

On appeal, the applicant submits additional documentation relating to his residence and physical presence in the United States. He also submits a record from the Fairfax County Police Department in Virginia indicating the following:

1. On August 28, 1998, the applicant was arrested and charged with Trespassing on Private Property (summons # [REDACTED]). He was found guilty, on October 30, 1998, of Trespassing on Other Property, and sentenced to 90 days imprisonment, suspended to 30 days;
2. On September 15, 1998, the applicant was arrested and charged with Trespassing on Private Property (summons # [REDACTED]). He was found guilty on October 30, 1998, and sentenced to 90 days imprisonment, suspended to 30 days;
3. On September 11, 1996, the applicant was arrested for being Drunk in Public or Profane (summons # [REDACTED]). He was found guilty, on October 2, 1996, of being Drunk in Public, and fined \$25.00;
4. On January 4, 1996, the applicant was arrested for being Drunk in Public or Profane (summons # [REDACTED]). He was found guilty, on February 7, 1996, of being Drunk in Public, and fined \$25.00;
5. On December 30, 1995, the applicant was arrested for being Drunk in Public or Profane (summons # [REDACTED]). He was found guilty, on February 8, 1996, of being Drunk in Public, and fined \$25.00;
6. On July 28, 1994, the applicant was arrested for being Drunk in Public or Profane (summons # [REDACTED]). He was found guilty, on September 28, 1994, of being Drunk in Public, and fined \$30.00, suspended to \$15.00; and,
7. On July 17, 1994, the applicant was arrested for being Drunk in Public or Profane (summons # [REDACTED]). He was found guilty, on November 18, 1994, of being Drunk in Public, and fined \$25.00.

The applicant is ineligible for TPS due to his having been convicted of two misdemeanor offenses, detailed in Nos. 1 and 2, above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application will be affirmed.

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.