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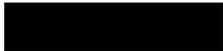
U.S. Citizenship
and Immigration
Services

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FILE:



[WAC 01 185 50099]

OFFICE: CALIFORNIA SERVICE CENTER DATE: NOV 17 2005

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, California Service Center. The application 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 he found the applicant had been convicted of two misdemeanors.

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 parole; 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 September 21, 2000, the applicant was arrested in Salinas, California, and charged with one count of threatening violence in violation of section 422 PC, a misdemeanor; one count of dissuading a witness by force or threat in violation of section 136.1(c) PC, a felony; and, one count of giving false information to a peace officer in violation of section 148.9(a) PC, a misdemeanor. On October 4, 2000, the applicant pled guilty in the Superior Court of California, County of Monterey, to count one, threatening violence in violation of section 422 PC. Counts two and three were dismissed in the furtherance of justice per section 1385 PC. (Case No. [REDACTED])
2. On October 5, 2000, the applicant was arrested in Salinas, California, and charged with one count of disorderly conduct under the influence of drugs or alcohol in violation of section 647(f) PC, a misdemeanor. On October 17, 2000, the applicant pled guilty to this charge in the Superior Court of California, County of Monterey. (Case No. [REDACTED])

On appeal, the applicant states that his family depends on him for financial support and asks that he be granted TPS.

The applicant’s statement is acknowledged. However, the fact remains that the applicant is ineligible for TPS due to his record of two misdemeanor convictions, detailed above. 8 C.F.R. § 244.4(a). There is no waiver available for this ground of ineligibility. Consequently, the director's decision to deny the application for this reason will be affirmed.

It is noted that the applicant previously filed an application for asylum and for withholding of removal with the San Francisco, California, asylum office on October 12, 1993. His application was denied on September 30, 1994, and he was referred for a removal hearing before an Immigration Judge.

On October 21 1996, the Immigration Judge denied the application for asylum and for withholding of removal and granted the applicant the privilege of voluntary departure on or before January 21, 1997, with an alternate order of deportation if the applicant failed to depart as ordered. On November 18, 1996, the applicant filed an appeal from the judge's decision with the Board of Immigration Appeals (BIA). On February 19, 1998, the BIA dismissed the appeal and granted the applicant the privilege of voluntary departure within 30 days of the decision date, with an alternate order of removal if the applicant failed to depart in compliance with the grant of voluntary departure.

On July 25, 2001, the District Director, San Francisco, issued a Form I-205, Warrant of Removal/Deportation and a Form I-166 notice ordering the applicant to report to the San Francisco District Office on August 29, 2001, for removal to El Salvador. The applicant failed to appear as ordered. To date, the warrant remains outstanding.

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.