

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



M 1

FILE: [REDACTED]
[SRC 01 154 67215]

OFFICE: TEXAS SERVICE CENTER DATE: **AUG 08 2006**

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 California Service Center. Any further inquiry must be made to that office.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The TPS application was denied by the Director, Texas Service Center. The application is now before the Administrative Appeals Office 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 she found that the applicant had failed to submit final court dispositions stemming from his criminal arrest on criminal charges in Texas.

On appeal, the applicant claims his eligibility for TPS status.

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 arrests:

1. On July 29, 1997, the applicant was arrested in Irving, Texas and charged with one count of theft U/\$50.00. The final court disposition of this criminal charge is unknown.
2. On June 16, 1996, the applicant was arrested in Irving, Texas and charged with one count of theft U/20,000. The final court disposition of this criminal charge is unknown.
3. On August 20, 2003, the applicant was arrested in Irving, Texas and charged with one count of driving while intoxicated. The final court disposition of this criminal charge is unknown.
4. On April 20, 2004, the applicant was arrested in Dallas, Texas and charged with one count of driving while intoxicated. The final court disposition of this criminal charge is unknown.

On appeal, the applicant states that he has submitted everything the service center requested with respect to his criminal arrests. The applicant submits the following documentation:

- I. A letter [REDACTED] County Courts of Dallas County, Texas in which she stated that she was unable to locate a suit filed in which the applicant is the Plaintiff or Defendant: covering the period from June 1991 through June 2001;

- II. A letter dated September 21, 2005, from the Court Services Coordinator in which he stated that a record search of cases filed at the Irving Municipal Court showed that that there were no cases currently pending against the applicant; and,
- III. A status print out from the Municipal Court of Irving, Texas that shows the applicant was arrested and charged with public intoxication in May of 1995, May and December of 1996, and March of 1997, that he paid the various fines, and that these charges had been cleared.

The letter written [REDACTED] (See item I above) pertains to civil suits and not criminal cases. The letter written by the Court Services Coordinator (See item II above) does not indicate that a search for past criminal records was conducted; and therefore, it is insufficient as a final court disposition. Although the status print out from the Municipal Court of Irving, Texas (See item III above) shows that the applicant was cleared of his public intoxication charges, there has been no evidence submitted to determine the final court disposition in numbers 1 through 4 above. The applicant has failed to provide any evidence revealing the final court disposition of all of his arrests. 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). Consequently, the director's decision to deny the application for this reason will be affirmed.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the requisite time period. For these additional reasons, the TPS application will be denied.

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.