



U.S. Citizenship
and Immigration
Services

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FILE:

OFFICE: CALIFORNIA SERVICE CENTER DATE: DEC 05 2006

[WAC 05 217 74870]

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:

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is stated 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 record reveals that the applicant filed a TPS application on June 19, 2001, under receipt number WAC 01 244 56758. On March 9, 2004, the director denied the application because the applicant failed to establish continuous physical presence and continuous residence in the United States during the requisite time periods. On April 8, 2004, the applicant filed a motion to reopen, which the director granted on April 13, 2004.

On November 15, 2004, the applicant was requested to submit all final court dispositions for his arrests. On February 3, 2005, the applicant submitted a court disposition for his January 9, 1999 conviction; however, he failed to submit the court disposition from his January 6, 2001 arrest, for vehicle theft and trespass. On March 30, 2005, the director denied the application because the applicant failed to submit the requested court documentation relating to his January 6, 2001 arrest. On May 2, 2005, the applicant filed a motion to reopen. On June 30, 2005, the director denied the motion because the applicant failed to state any reason for the decision to be reconsidered.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 5, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was therefore not eligible to apply for re-registration under TPS.

On appeal, the applicant states he sent all requested documents. He admits to the January 6, 2001 arrest, but failed to submit the final court disposition for that arrest.

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. 8 C.F.R. § 244.1.

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.

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.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The record reveals the following offenses:

- (1) On January 9, 1999, the applicant was arrested for shoplifting
- (2) On January 6, 2001, the applicant was arrested for vehicle theft and trespass

Pursuant to a letter dated November 15, 2004, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant provided the court disposition for the January 9, 1999 arrest. The Judge in the Municipal Court of California, County of Los Angeles, amended the charge and found the applicant guilty of trespass: injure property, in violation of California Penal Code § 602(J), a misdemeanor.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on March 30, 2005.

On appeal, the applicant states he has submitted all the court dispositions for his arrests.

The applicant has failed to provide any evidence revealing the final court disposition of his January 6, 2001 arrest, detailed above. 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).

It is noted that another record [REDACTED] relating to the applicant's deportation proceedings was created on January 11, 2001.

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.