



U.S. Citizenship
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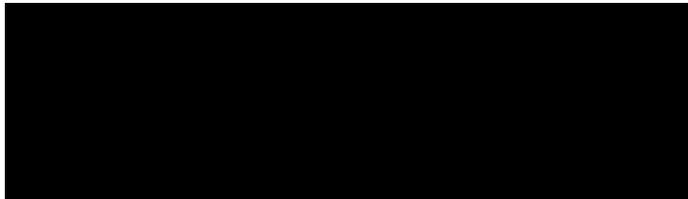
[WAC 01 239 57716]

OFFICE: VERMONT SERVICE CENTER

DATE: **JAN 17 2006**

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.

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

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 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 the applicant had failed to respond to a request for certified court dispositions of all of his arrests.

On appeal, the applicant submits a statement and documents previously furnished and contained in the record.

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 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.

In a notice of intent to deny dated June 25, 2003, the applicant was requested to submit: (1) evidence to establish continuous residence in the United States since February 13, 2001; (2) evidence to establish continuous physical presence from March 9, 2001, to the date of filing the application; (3) evidence to show that he is a citizen or national of El Salvador; and (4) the final court disposition of every charge against him, including his arrest on August 19, 2000, in Modesto, California. The director concluded that the record did not contain the applicant's response; therefore, the director denied the application on August 26, 2003. The applicant appealed the director's decision on September 3, 2003.

On January 21, 2004, the director noted that evidence shows that CIS received a response from the applicant but it was not incorporated into the record. The applicant was advised that the Federal Bureau of Investigation (FBI) fingerprint results report shows that the applicant was arrested on August 19, 2000, in Modesto, California, under the name [REDACTED] and charged with disorderly conduct, drug with alcohol. The applicant was, therefore, requested to submit the final court disposition of this arrest, and any other arrests. In response, the applicant submitted a letter from the Superior Court of California, County of Stanislaus, Modesto, California, dated February 17, 2004, indicating that a record check has been done on [REDACTED] from 1974 to the present and no charges were found.

In a notice of intent to deny dated May 26, 2004, the director noted that the letter from the Superior Court of California indicated that only the names, [REDACTED] were checked; however, it did not indicate that all of the applicant's known aliases and dates of birth were checked (the director noted that the applicant used three different dates of birth). The director further noted that the FBI report, updated on March 26, 2004, indicates the following:

- (1) Arrested on August 19, 2000, in Modesto, California, for disorderly conduct, drug with alcohol (name used: [REDACTED])

- (2) Arrested on March 12, 2003, in Modesto, California, for Count 1, battery with serious bodily injury, and Count 2, conspiracy to commit a crime (name used: [REDACTED])

The applicant was, therefore, requested to submit the final court dispositions of the arrests listed in Nos. 1 and 2 above, including the final court disposition of every charge against him.

On appeal, the applicant states that he submitted what was given to him by the police department of Modesto, California, showing that he has no criminal record. He resubmits a copy of the letter from the Superior Court of California, County of Stanislaus, Modesto, California, detailed above.

As maintained by the director, the letter from the Superior Court did not indicate that all of the applicant's known aliases and dates of birth were checked. It is noted that the two names checked by the court were misspelled. Additionally, there is no evidence that the arrest information, such as the date and place of arrest and offense, fingerprints, and other pertinent information, were used for the search. Furthermore, there is no evidence that the applicant's cases were heard at this court. It may be assumed that the applicant would have known where his cases were heard.

The applicant has failed to provide the final court dispositions of his arrests detailed in Nos. 1 and 2 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). Consequently, the director's decision to deny the application for this reason will be affirmed.

It is noted that on June 26, 2001, the Board of Immigration Appeals administratively closed removal proceedings to accord the applicant the opportunity to apply for TPS.

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.