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U.S. Citizenship
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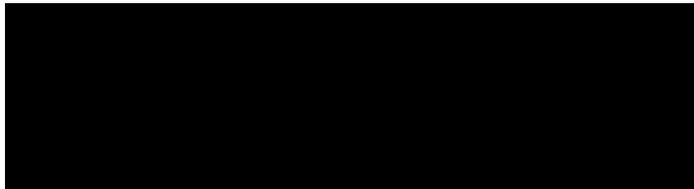
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OFFICE: VERMONT SERVICE CENTER

DATE: **JAN 26 2006**

IN RE:

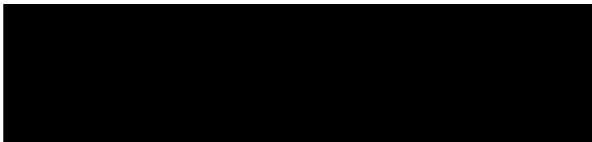
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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. 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 she found the applicant had been convicted of two misdemeanors.

On appeal, the applicant submits a statement.

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 offenses:

1. On December 26, 1999, the applicant was arrested in Virginia, under the name [REDACTED] and charged with driving under the influence of alcohol in violation of section 8.2-266 of the Code of Virginia, a Class 1 misdemeanor. On January 7, 2000, the applicant was convicted of this charge in the Traffic Court, Shenandoah, Virginia. (Case No. [REDACTED])
2. On June 19, 2000, the applicant was arrested in Fairfax County, Virginia, and charged with one count of keeping or residing in a bawdy house in violation of section 18.2-347, Code of Virginia, a Class 1 misdemeanor. On September 22, 1999, the applicant was convicted of this charge in the Fairfax County General District Court, Fairfax County, Virginia. (Case No. [REDACTED])
3. On March 20, 2001, the applicant was arrested in Cumberland, Maryland, under the name [REDACTED] and charged with assault in the second degree and disorderly conduct. On April 24, 2001, prosecution on these charges was declined in the District Court of Maryland and for Allegany County, Cumberland, Maryland. (Case No. [REDACTED])

On appeal, the applicant states that he no longer drinks alcohol and is now a different man. The applicant states that he has a girlfriend in the United States and plans to be married soon. The applicant submits a letter dated April 6, 2004, from [REDACTED] stating that she is the applicant's girlfriend, and she is aware of his

two misdemeanor offenses. Ms. [REDACTED] further states that the applicant no longer drinks alcohol and is not the same person he was four years ago.

The applicant's statements are acknowledged. Nevertheless, the fact remains that he is ineligible for TPS due to his record of two misdemeanor convictions, detailed in Nos. 1 and 2 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason 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.