

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

M/1

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: JUL 20 2006

[EAC 99 220 50755]

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:

[REDACTED]

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 "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The approval of the application was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 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 withdrew the approval of the application because he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant submits a brief statement and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under § 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.
- (g) Has filed an application for late registration with the appropriate Service director, within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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 applicant filed his initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on July 6, 1999. At the time of filing his application, the applicant indicated that he had never been arrested. The application was approved on May 15, 2000. Subsequent to the approval of the application, a criminal history check revealed the following arrests:

- (1) On April 10, 2001, for “ASLT W/INT CAUSES PHYS;”
- (2) On July 1, 2001, for ASLT W/INT CAUSES PHYS;” and,
- (3) On January 25, 2002, for CRIM CONTEMPT – 1ST.”

Pursuant to a letter dated April 15, 2003, the applicant was requested to submit the final court dispositions for each of the charges detailed above. In response, the applicant provided a letter, dated May 1, 2003, from a Suffolk County, New York, probation officer stating that the applicant was sentenced to probation on October 10, 2001, for the offense of Assault Third Degree, and a document from the Victims Information Bureau of Suffolk, dated January 7, 2003, stating that the applicant had satisfactorily completed a 32-week sequence of a Help Abusers Learn Together (H.A.L.T.) program on December 30, 2002.

On May 23, 2003, the director withdrew the approval of the application because the applicant had failed to provide the final court dispositions of all of his arrests.

On appeal, the applicant provides documentation indicating that: a charge of Assault 3rd Degree, in violation of New York State Public Law section 120.00, was dismissed on October 9, 2001; he pled guilty to a charge of Assault 3rd Degree, in violation of NYS PL section 120.00, a Class A Misdemeanor, on October 9, 2001; and, he pled guilty to a charge of Criminal Contempt 2nd Degree, in violation of NYS PL section 215.50, a Class A Misdemeanor, on December 2, 2002

Based on a review of the record, it is concluded that the applicant is ineligible for Temporary Protected Status due to his having been convicted of two or more misdemeanor offenses committed in the United States. Consequently, the director's decision to withdraw TPS 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.