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FILE:



[EAC 02 005 51122]

OFFICE: VERMONT SERVICE CENTER

DATE: **JUN 05 2006**

IN RE:

Applicant:



APPLICATION:

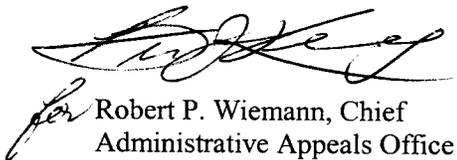
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


for Robert P. Wiemann, Chief
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 submit requested court documentation relating to his criminal record.

On appeal, the applicant submits court and police records and states that he has maintained a good moral character.

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 February 20, 2000, in Arlington, Virginia, the applicant was arrested for possession of a fictitious, facsimile, or simulated driver’s license or identification card, Virginia Code § 18.2-204.2. On October 9, 2003, the Arlington General District Court, Virginia, under Case [REDACTED] amended the charge to disorderly conduct, Virginia Code § 18.2-415, a Class 1 misdemeanor. On November 23, 2004, the applicant entered a plea of guilty to disorderly conduct, as amended. He was sentenced to 365 days, suspended, and ordered to pay \$250 in fines and costs.
- (2) On June 19, 2003, in Arlington General District Court, Virginia, the applicant was arrested and charged with failure to appear, a misdemeanor. In the notice of intent to deny dated February 15, 2005, the applicant was advised that the documentation he provided merely reflects that he was granted a bond and released on his own recognizance, and that the court document did not substantiate that he was relieved of these charges or was convicted. On appeal, the applicant submits a criminal record check from the Fairfax County Police Department indicating that “disposition not known” relating to this arrest. The applicant, however, failed to submit the final court disposition of this arrest from the court where the case was heard.
- (3) On March 10, 2004, in Fairfax General District Court (arrest dated November 15, 2003), the applicant was convicted of drunk in public, a Class 4 misdemeanor. He was ordered to pay \$190 in fines and costs. Pursuant to Virginia Code § 18.2-11, a Class 4 misdemeanor is punishable only by a fine of not more than \$250. Therefore, this conviction is not considered a misdemeanor for immigration purposes. 8 C.F.R. § 244.1.

The applicant has failed to provide the final court disposition of his arrest detailed in No. 2 above. Therefore, 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).

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.