



U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

JUN 21 2006

[EAC 05 010 51167]

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.

Cindy M. Gomez 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 was convicted of two misdemeanors committed in the United States.

On appeal, counsel for the applicant requests that his arrest records be reviewed because she believes the director's decision was made in error.

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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "felony" and "misdemeanor" as:

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's Federal Bureau of Investigation Identification Record, contained in the record of proceeding, reflects the following:

- (1) On June 18, 1984, the Mineola County Police in New York, arrested the applicant (under the alias [REDACTED] and charged him with petit larceny. On September 18, 1984, he was convicted of the charge of disorderly conduct.

- (2) On April 2, 1985, the Mineola County Police in New York, arrested the applicant for petit larceny. He pled guilty to attempted petit larceny and was convicted and sentenced to one year probation.
- (3) On September 17, 1986, the Mineola County Police in New York, arrested the applicant (under the alias [REDACTED] for [1] petit larceny and [2] the possession of burglar tools. He pled guilty to petit larceny and was sentenced to three years probation.
- (4) On October 27, 1998, the Mineola County Police in New York, arrested the applicant for "ASSAULT 3RD."

The applicant did not provide the dispositions of his June 18, 1984, or his April 2, 1985, arrests, listed as Items #1 and #2 above.

The record contains a Record of Disposition dated March 4, 2005, from the Clerk of the District Court of Nassau County – Hempstead, New York, showing the applicant pled guilty to petit larceny, a misdemeanor, from his September 17, 1986 arrest, the first charge listed at Item #3 above, on July 20, 1989, and that he was sentenced to three years probation.

The record contains another Record of Disposition dated March 4, 2005, from the Clerk of the District Court of Nassau County – Hempstead, New York, showing that the applicant's charge of the possession of burglar tools from his September 17, 1986 arrest, the second charge listed at Item #3 above was dismissed on July 20, 1989.

The record contains a third Record of Disposition dated March 4, 2005, from the Clerk of the District Court of Nassau County – Hempstead, New York, showing that the applicant charge of assault from his October 27, 1998 arrest, listed at Item #4 above was reduced to PL 240.25, Harassment in the First Degree, a misdemeanor. He pled guilty to the harassment charge and was sentenced to two days imprisonment. He was also charged as an "OPERATOR LEAVING SCENE OF ACCIDENT," a traffic infraction, to which he pled guilty and was sentenced to two days imprisonment.

It is noted that for immigration purposes, a misdemeanor is any offense that is punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any. It is also noted that offenses that are punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. In this case, New York law provides that a violation of Section 600.1(a) of Article 22 (Leaving scene of an incident without reporting) is punishable by imprisonment for up to fifteen days. Therefore, this conviction qualifies as a "misdemeanor" as defined for immigration purposes in 8 C.F.R. § 244.1.

The record shows that the applicant has been convicted of two or more misdemeanors.¹ Therefore, the director's determination to deny the TPS application shall not be disturbed.

It is noted that, in removal proceedings held on November 20, 2003, an Immigration Judge in New York, New York, ordered the applicant deported "in absentia" to El Salvador. The applicant appears to have exhausted all appeal and motion rights when the Board of Immigration Appeals dismissed the last motion on August 10, 2004. There is no evidence in the record that the applicant departed from the United States as ordered.

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.

¹ The record also contains numerous other arrests under other aliases.