

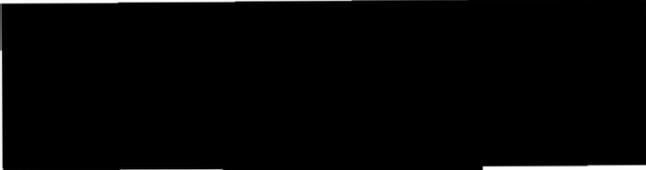


U.S. Citizenship
and Immigration
Services

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FILE:

OFFICE: VERMONT SERVICE CENTER

DATE: JUN 27 2006

[WAC 01 170 50385]

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, Chief
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 claims to be 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 he found that the applicant had failed to submit requested court documentation relating to his criminal record. The director also denied the application because the applicant failed to establish his identity and nationality.

On appeal, counsel for the applicant submits a statement and additional evidence.

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.
8 C.F.R. § 244.1.

The first issue in this proceeding is whether the applicant has submitted the final court dispositions of all arrests since his arrival in the United States.

The Federal Bureau of Investigation (FBI) fingerprint results report reveals the following offenses:

1. On April 8, 2001, the applicant was arrested in Los Angeles, California, and charged with driving under the influence of alcohol.
2. On May 4, 2001, the applicant was arrested in Norwalk, California, and charged with driving under the influence of alcohol.

Pursuant to a letter dated June 8, 2004, the applicant was requested to submit evidence to establish his identity and nationality and evidence reflecting the final court disposition for each of the charges detailed above. The record does not contain a response from the applicant.

The director determined that the applicant had failed to submit evidence to establish his identity and nationality and evidence reflecting the final court dispositions of the arrests detailed in Nos. 1 and 2 above and denied the application on January 14, 2005.

On appeal, counsel for the applicant asserts that the applicant never received the Notice of Intent to Deny. Counsel submits a final court disposition and evidence in an attempt to establish the applicant's identity and nationality.

The court document indicates that the applicant was arrested in Los Angeles, California, on April 8, 2001, and charged with: (1) driving under the influence of alcohol in violation of section 23152(a) VC, a misdemeanor; (2) driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) VC, a misdemeanor; (3) driving without a valid driver's license in violation of section 12500(a) VC, a misdemeanor; and, (4) failure to provide proof of car insurance in violation of section 16028(a) VC, an infraction. On May 3, 2001, the applicant pled *nolo contendere* in the Superior Court of California, County of Los Angeles, to Count 2, driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) VC, a misdemeanor, and to Count (4), failure to provide proof of car insurance in violation of section 16028(a) VC, an infraction. Counts (1) and (3) were dismissed in the furtherance of justice. As to Count 2, the applicant was placed on summary probation for a period of 36 months with the condition that he serve 48 hours in the Los Angeles County Jail. He was also required to pay various fees and complete a three-month first offender alcohol education and counseling program, and have his driving privilege restricted for 90 days. The applicant was ordered to report to court for commitment to the Los Angeles County Jail on May 4, 2001. On May 4, 2001, the applicant appeared in court as scheduled and was committed to jail for a period of 48 hours.

It appears that the arrest listed as No. 2 on the FBI fingerprint results report relates to his commitment to the Los Angeles County Jail for a period of 48 hours in connection his conviction on Count (1). Therefore, it is concluded that the applicant has provided the final court disposition of all arrests, and this ground for denial of the application has been overcome. Further, since the applicant has only been convicted of one misdemeanor, he is not ineligible for TPS based on two or more misdemeanor convictions and this portion of the director's decision is withdrawn.

The second issue in this proceeding is whether the applicant has provided sufficient evidence to establish his identity and nationality.

Each application must be accompanied by evidence of the applicant's identity and nationality. Acceptable evidence in descending order of preference may consist of the alien's passport, a birth certificate accompanied by photo identification, and/or any national identity document from the alien's country of origin bearing photo and/or fingerprint. 8 C.F.R. § 244.9(a)(1).

The applicant initially provided a photocopy of a Salvadoran birth record with English translation.

As stated above, the applicant was requested on June 8, 2004, to provide a Salvadoran birth certificate with an official stamp, a copy of the biographical pages of his Salvadoran passport, or a photocopy of his Salvadoran national identity document (*cedula*). The record does not contain a response from the applicant.

The director concluded that the applicant has failed to establish his identity and nationality and denied the application.

On appeal, counsel for the applicant submits another photocopy of the applicant's Salvadoran birth certificate with no seal or stamp, with English translation; a photocopy of the applicant's Salvadoran taxpayer's identification card without English translation; and, a photocopy of the applicant's Salvadoran *cedula* without English translation.

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS must be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The applicant still has not provided a photocopy of his Salvadoran birth certificate with stamp or seal. The Salvadoran taxpayer's card and cedula cannot be accepted since they are not accompanied by English translation. The applicant has not submitted sufficient evidence to establish his identity and nationality. Consequently, the director's decision to deny the application on this basis will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. Therefore, the application also must be denied for these reasons.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.