



U.S. Citizenship
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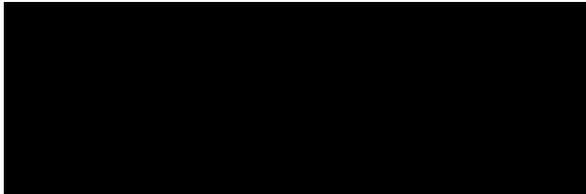


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OFFICE: TEXAS SERVICE CENTER

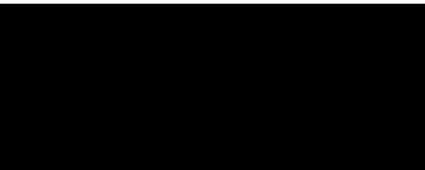
DATE: MAY 15 2006

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 ineligible for TPS due to his criminal record of two misdemeanor convictions.

On appeal, counsel for the applicant submits a brief 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.

The record reveals the following offenses:

- (1) On June 9, 1993, the applicant was arrested by the Houston Police Department [Texas] and charged with CHARGE 1-DRIVING WHILE INTOXICATED;
- (2) On July 20, 1996, the applicant was arrested by the Houston Police Department [Texas] and charged with CHARGE 1-DRIVING WHILE INTOXICATED.

Pursuant to a letters dated January 30, 2003, and February 27, 2004, the applicant was requested to submit the final court dispositions for each of the charges detailed above. The January 30, 2003, letter also requested that the applicant submit: photo identification or a national identity document from his country of origin bearing a photograph and or fingerprint; a copy of his Social Security record; and, evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. In response, the applicant submitted his State of Texas Identification Card issued on February 21, 2003; his El Salvadoran birth certificate and cedula; a Social Security Number Verification from the Social Security Administration; an earnings statement dated January 1, 2001, that does not bear a Social Security number, or verifiable information about the company; a Bill of Costs and Judgment dated May 24, 1993, Cause [REDACTED] indicating a fine, 180 days confinement in the Harris County Jail probated for a period of two years, and a guilty plea to the charge of Driving While Intoxicated; and, a document entitled Conditions of Probation dated May 24, 1993, in the same cause.

The record also contains the following additional evidence: the applicant's State of Texas Identification Card with expiration on June 8, 2000; an earnings statement dated February 5, 2001, that does not bear a Social Security number, or verifiable information about the company; an earnings statement dated February 16, 2001, that does bear a different Social Security number than that listed as the applicant's; and, a Southwestern

Bell telephone billing statement and payment receipt in his name dated March 13, 2001. In addition, the record includes the following documents relating to the applicant's arrest record:

1. A Certificate of Disposition, Harris County District Clerk, Houston, Texas, dated March 10, 2004, in the name [REDACTED] indicating:
 - a. A filing date of June 10, 1993, Court Case: 008/932412101010, Offense Report No.: [REDACTED] charge "DWI 2ND," a Class A Misdemeanor, and reflecting a disposition dated July 20, 1993, with a guilty plea, probated two year sentence, and fine, and indicating "judgment set aside case dismissed" as of July 31, 1995, and
 - b. A filing date of July 20, 1996, Court Case: [REDACTED] Offense Report No.: [REDACTED], charge "Driving While Intoxicated," a Class B Misdemeanor, and reflecting a disposition dated March 4, 2003, with a guilty plea, probated two year sentence and fine;
2. A Bill of Costs and Judgment dated July 20, 1993, Cause [REDACTED] indicating a fine, 180 days confinement in the Harris County Jail probated for a period of two years, and a guilty plea to the charge of Driving While Intoxicated, Second, and, a corresponding document entitled Conditions of Probation dated July 20, 1993, in the same cause, and a Termination Order dated July 31, 1995, discharging the applicant from probation;
3. A judgment dated March 4, 2003, in Cause [REDACTED] for the offense Driving While Intoxicated, a Class B Misdemeanor, committed on July 20, 1996, indicating a plea of guilty, 180 days confinement in the Harris County Jail, sentence suspended for two years probation, and a fine, with a document entitled Conditions of Community Supervision dated March 4, 2003, in the same cause; and,
4. A letter dated March 10, 2004 from the City of Houston Police Department, indicating the above charges pertaining to the record of [REDACTED]

The director determined that the applicant was ineligible for TPS and denied the application on June 8, 2004.

On appeal, counsel for the applicant asserts that the applicant has only one conviction classified as a Class A Misdemeanor. Counsel maintains that the denial letter indicating two DWI convictions contains "merely assertions without further proof." In support of the appeal, counsel submits additional documentation consisting of:

1. A Certificate of Disposition, Harris County District Court, Houston, Texas, dated July 15, 2004, in the name of [REDACTED] indicating a filing date of March 1, 1993, Court Case [REDACTED] Offense Report No. [REDACTED] charge "DWI 1ST," a Class A Misdemeanor, and reflecting a disposition dated May 24, 1993, with a guilty plea, probated sentence, and fine, and indicating "unsatisfactory termination" as of February 7, 1994;
2. A Bill of Costs and Judgment dated May 24, 1993, Cause [REDACTED] indicating a fine, 180 days confinement in the Harris County Jail probated for a period of two years, and a guilty plea to the charge of Driving While Intoxicated; and,
3. A document entitled Conditions of Probation dated May 24, 1993, in the same cause.

The documents presented by counsel on appeal pertain to yet another earlier arrest with an offense date of March 1, 1993, and a different cause number. Although counsel asserts that the additional charges relating to

the June 9, 1993 and July 20, 1996 arrests are "mere assertions," both the City of Houston Police Department record check and the Federal Bureau of Investigation (FBI) fingerprint results report indicate these charges are identified as pertaining to the applicant's fingerprints. Counsel has submitted no evidence to substantiate his assertion that the applicant is not associated with the misdemeanor convictions resulting from the June 9, 1993 and July 20, 1996 arrests.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, detailed above. 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.